

GOVERNANCE COMMITTEE

Subject Heading:	Review of Planning Decision Making Processes and Procedures
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Policy context:	The proposed changes are designed to improve the delivery of the Council's planning policies through decisions made in committee on planning applications.
Financial summary:	The changes proposed may result in additional costs to the Council because of the creation of two planning committees.

The subject matter of this report deals with the following Council Objectives

Communities making Havering	[X]
Places making Havering	[X]
Opportunities making Havering	[X]
Connections making Havering	[X]

SUMMARY

This report reviews the make-up and operation of Regulatory Service Committee and recommends reforms to improve the way the Council deals with planning applications and in particular strategic applications. Part 3 Responsibility for Functions, Part 4 Rules of Procedure and Part 5 Codes and Protocols within the Constitution are reviewed, alongside other consequential amendments to other parts of the Constitution, resulting in the setting up of a Strategic Planning Committee to deal with strategic applications and any other strategic matters and a Planning Committee to deal with everything else. The new Constitutional material is based on best practice, current law and nationally recommended procedures.

RECOMMENDATIONS

That Governance Committee recommend to Full Council:

1. the setting up a new Strategic Planning Committee to deal with strategic applications and any other strategic planning matters and a Planning Committee to deal with other planning applications and planning matters.
2. the main changes to the Constitution set out in Appendix A and the consequential minor amendments to the Constitution set out in Appendix B.
3. that the following documents be included in the Constitution:
 - the Functions Delegated to Staff, in Appendix C;
 - the Functions Not the Responsibility of the Executive, in Appendix D;
 - the Planning Committee Procedure Rules, in Appendix F; and
 - the Planning Code of Good Practice, in Appendix G.
4. that these changes be implemented after the May 2018 local elections.

REPORT DETAILS

1 INTRODUCTION

- 1.1 New proposals for the governance of planning matters have been under review following a resolution at Full Council in October 2017 that the Governance Committee considers the current constitutional arrangements for determining planning applications and in particular major applications in addition to reviewing the right of members, other than those on the committee, to speak at Regulatory Services Committee meetings.
- 1.2 The regeneration and growth strategy that Havering has embarked upon is an exciting challenge. To achieve the quality of development that is both desired and needed, the Council is changing to be a more pro-active, delivery-focused planning authority. A myriad of changes will be needed to instil best practice throughout the organisation so that it is ready to handle the challenges that lie ahead. The involvement of Members in the pre-application stage is promoted as best practice¹. It will be vital to ensure that strategically important planning applications are dealt with properly and that the involvement of Members is achieved in an effective and systematic way so that the Council succeeds in its ambitions.

¹ “*Connecting Councillors with Strategic Planning Applications*” London First and POS London 2011 and “*10 Commitments for Effective Pre-Application Engagement*” LGA and BPF 2014

- 1.3 Key Members have already been briefed on how a new strategic application process will operate. This report goes into the detail of the changes that would be needed to the Constitution to facilitate these improvements.
- 1.4 In this part of the report the changes proposed will be summarised. A detailed rationale for the proposed changes is set out in Appendix A. Appendix B contains consequential minor changes that need to be made to the Constitution as a result of the main changes. The detailed text for key parts of the Constitution are set out in the following appendices:
- Appendix C Functions Delegated to Staff
 - Appendix D Functions Not the Responsibility of the Executive
 - Appendix F Planning Committee Procedure Rules
 - Appendix G Planning Code of Good Practice
- 1.5 Appendix E sets out the text in the Town and Country Planning (Mayor of London) Order 2008 of Potentially Strategically Important (PSI) applications for planning permission. This definition is proposed to be used in the Committee Consideration Criteria and is included for information.
- 1.6 Appendix H has a flow chart that illustrates the process (as set out in the Planning Committee Procedure Rules) for deciding which planning applications go to planning committee for determination and which are decided with under delegated powers.

2 BACKGROUND

- 2.1 Havering has a higher than normal rate of major applications determined by the Council that are refused and subsequently allowed at appeal (nearly 10%). Over the last two years, nearly 85% of these were decisions by RSC against the recommendation of officers. Government uses this indicator as a measure of the quality of decision making and because of this poor performance Havering was at risk of being designated by DCLG.
- 2.2 Government looks at major application appeal performance as a % of all major applications determined over a defined two-year period (April 2015 to March 2017). If a LPA lose more than 10% of such appeals over the period, that is considered poor performance and designation can follow. Being designated means that an applicant on a major application can apply direct to the Planning Inspectorate to have the application determined and bypass the Council. This would result in significant reputational damage, as well as loss of jurisdiction and loss of fee income.
- 2.3 The risk of designation at the end of 2017 was because the Council had lost six appeals out of 65 such decisions and this puts LBH at 9.23% – of those six, five of the decisions were overturns at committee. This should mean the Council just escapes designation, but at the time of writing this report these figures have not yet been confirmed and agreed with DCLG. Nevertheless, the Council will be scrutinised by DCLG because it came so close to designation. It is therefore important that the Council can demonstrate that it has recognised the problem and are actively addressing it so that such a poor performance in the quality of decision-making is not likely to re-occur.
- 2.4 Whilst the Council was at risk, it was contacted by the Planning Advisory Service (PAS) as part of the Government's programme to assist LPAs who

are struggling in some way (there are other indicators on speed of determination and plan-making performance being used). The support has taken the form of a Planning Committee Review by two PAS specialist (a former Chief Planner and an experienced Planning Committee Chairman) assisted by a PAS Improvement Manager. They observed RSC in operation on two occasions and spoke to key members and officers. A report has been produced including the following key recommendations:

- Members should make decisions on borough wide issues rather than ward issues
- Planning committee needs to operate as an enabler and facilitator for development, rather than controlling or preventing it
- All committee members need to be adequately trained and agree to attend the entire programme – failure to do so needs to be effectively enforced
- A chief planner needs to be in place to manage the planning service and to act as the key go between with members

2.5 This report sets out the options for addressing these concerns.

3 AIMS OF THE REVIEW

3.1 All planning applications, but strategic planning applications in particular, can raise tensions locally and it is vital that they are processed correctly so that the potential for challenge is minimised. A carefully drafted Constitution is crucial for this.

3.2 The rate of growth in the South East's population is not abating and pressure on London Boroughs to accommodate growth will remain and probably increase. The integration of the pre-application process into the Council's committee process will mean that Planning Committee Councillors can play a greater role in the design process and input into a scheme's development before it is submitted as a planning application. As a borough that wants to encourage high quality developments that enhances Havering, these changes will enable the Council to do that much more effectively.

3.3 These changes mean that Members, quite rightly, will be spending more of their time on this strategic application workload and there will be a need to make the space for this by ensuring that only those non-strategic applications that need to, actually come to committee. Planning Committee's valuable time will need to be spent on strategic placemaking, rather than on neighbourhood dispute mediating. Their focus must shift to the borough as a whole, rather than having narrower ward issues as their focus. The committee's role as enablers and facilitators of development will need to be established and developed, with less of a focus on controlling or preventing development. Members' active involvement in the pre-application stage will be vital to this culture change for the committee.

3.4 A further consideration is that an application costs significantly more to process when the decision is taken at committee rather than under delegated powers. The difference will vary by application type, but it will be over £1,000 per application in most cases. This adds up to a considerable sum over a year. In the context of reduced council funding, it is even more important to ensure that Planning Committee only deals with those matters that it really needs to.

3.5 Finally, the issues highlighted in the previous section (Background) are addressed where relevant to the matters covered by this report.

3.6 This report sets out the options for achieving these aims.

4 REGULATORY SERVICES COMMITTEE

4.1 Planning applications are currently determined at Regulatory Services Committee (RSC). That committee also deals with the following matters, albeit very infrequently:

- Health and Safety
- Highways Use and Regulation
- Urban Development Corporation (this is the London Thames Gateway Development Corporation, which no longer exists)

4.2 Given the importance of determining planning applications in the context of a large growth and regeneration agenda, planning matters, particularly strategic ones, need to be dealt with in their own separate committee. This is the model most Council's adopt because it enables the level of expertise needed plus the training commitment necessary to be developed and delivered so that the committee is resourced to perform well.

4.3 It is proposed that there will be two planning committees: a Strategic Planning Committee (SPC) to deal with strategic applications and any other strategic planning matters and a Planning Committee (PC) to deal with everything else. The residual functions of RSC (Health and Safety and Highways Use and Regulation) will be allocated to the new Planning Committee.

4.4 The need for two committees should be kept under review. If a single committee is preferred after time, this can be accommodated with only minor changes to the procedures and provisions set out in this report.

4.5 The size of each committee needs to be considered. RSC is currently eleven members and it is proposed that number will remain for PC. Strategic planning committees are often smaller given the need to have a high-quality membership dealing with very important planning applications. It is recommended that seven members should be the size of the new SPC. The size of committees is determined by Full Council at the meeting in May along with the membership, based on political balance.

4.6 The existing Constitution (Part 2 The Articles of the Constitution, Appendix to articles – pg 28) states under the rules for RSC on membership requirements, "... of whom only one may be an Executive Member, or two if one is acting as a substitute". It is recommended that this be deleted as Cabinet members, sitting on SPC in particular, could be useful.

4.7 Finally, it is recommended that the following be added with respect to the membership of both committees:

"When the membership of the committee is determined, there should always be at least one Councillor in each Ward who is not a member of SPC or PC to ensure that there will always be a Councillor with whom residents will be able to discuss planning matters."

4.8 These changes are set out in Appendix B.

5 CONSTITUTION

- 5.1 The Constitution sets out what RSC deals with and how these matters are handled. This is mainly contained in the following parts of the Constitution:
- Part 3 Responsibility for functions: sets out the functions for RSC and the functions delegated to staff
 - Part 4 Rules of procedure: contains general rules for committees
 - Part 5 Codes and protocols: contains a “Protocol on probity in planning matters”
- 5.2 The whole Constitution has been reviewed for this purpose and the recommendations include the changes that will be required if the approach set out in the introduction is to be implemented. There are a number of other consequential changes to the Constitution that have been identified which will also need to be implemented. These are summarised in Appendix B.

6 RESPONSIBILITY FOR FUNCTIONS

- 6.1 This contains three things that will create, define and manage the remit of the new planning committees:
1. Council Functions
 2. Functions Delegated to [Head of Planning]
 3. Functions Not to Be the Responsibility of The Executive
- 6.2 The detailed design of and rationale behind these elements are set out in detail in Appendix A and summarised below.

COUNCIL FUNCTIONS

- 6.3 Part 3, section 1 of the Constitution defines the broad matters Council has delegated to committees to deal with. It is recommended that both planning committees deal with the following application types:
- Applications for Planning Permission
 - Applications for Listed Building Consent
- 6.4 The other application types we deal with under planning legislation are either very minor and raise no significant issues, are limited in the way they can be determined (ie they are confirming what a legal position is and no judgement is exercised) or are very specialised and determination is driven by expert opinion (either from council experts or external bodies).
- 6.5 SPC will deal with those applications that raise strategic issues. It is not proposed to define these by reference to the size of the development because that is not the only determining factor. It will be a decision for the [Head of Planning] to make. Essentially it will be those applications that go through the Development Team Approach pre-application service and are presented to SPC in the pre-application stage. Clearly the Constitution will need to specify that SPC will also receive presentations in the pre-application or pre-determination stage.
- 6.6 Both committees have a catch-all provision to receive other planning matters that the [Head of Planning] considers should be referred to committee.

DELEGATION SCHEME

Functions Delegated to [Head of Planning]

- 6.7 Part 3, section 3.6 sets out the specific matters delegated to named officers. It is proposed to redraft this to make it simpler, clearer and more comprehensive than the current approach. The new scheme is explained in Appendix A and set out in Appendix C.

Functions Not to Be the Responsibility of the Executive

- 6.8 Part 3, section 4 sets out the matters that are not Executive functions. The table also delegates matters to either officers or committees like PC/SPC. This is largely a statutory requirement to set out the different responsibilities between Full Council and the Executive. Essentially it is defined in legislation, but the way such documents are generally drafted in Constitutions (ie by reference to specific sections in legislation) mean that they can unintentionally miss some powers and quickly become out-of-date. Appendix D sets out an approach that refers to the parts of a statute (eg the Planning Act or other relevant statutes) rather than specific sections within an Act, which will ensure a more comprehensive approach and a much longer shelf life.

7 RULES OF PROCEDURE

- 7.1 The proposed changes in this area represents a major improvement to the Constitution.
- 7.2 The current rules for RSC are mainly contained in the general Committee Procedure Rules and the Protocol on Probity in Planning Matters. There are also rules scattered across other parts of the constitution. This makes it very difficult to know what the rules are, plus in some instances (eg, public speaking) they are duplicated and different. It is recommended that pulling together existing procedures into a single document would be advantageous.
- 7.3 Supplementing this with what is required to handle the new procedures around pre-application presentations will also be required.
- 7.4 These Rules would therefore be subservient to the general Committee Procedure Rules in Part 4 of the Constitution: Rules of procedure. They should be called Planning Committee Procedure Rules and within the document make it clear that they apply to both of the Council's new planning committees.

PLANNING COMMITTEE PROCEDURE RULES

- 7.5 The detailed design of and rationale behind these Rules are set out in detail in Appendix A. The new set of rules will have the following components:
- Committee Consideration Criteria
 - Public Speaking Procedure (including member speaking rights)
 - Pre-Committee Matters
 - Committee Agenda
 - Order of Proceedings
 - Decision Making
 - Voting Procedures
 - Committee Performance

- 7.6 A draft of the Rules is set out in Appendix F and they would be located in Part 4 of the Constitution: Rules of procedure.

8 CODES AND PROTOCOLS

- 8.1 Part 4 of the Constitution (Codes and Protocols) contains a “Protocol on probity in planning matters”. This tries to perform two separate roles. It sets out the standards of behaviour that all Councillors and officers involved in the planning process should adhere to, but also has some, but not all, of the procedures and rules that govern the operation of RSC. The rest of the procedures and rules for RSC are elsewhere in the constitution or have not been documented.
- 8.2 It is already recommended in the previous section, that all the SPC/PC procedure rules should be in one place. Here it is recommended that there should be a new Planning Code of Good Practice that will deal with standards of behaviour only and not cover the operation of two new planning committees. A draft is set out in Appendix G.

PLANNING CODE OF GOOD PRACTICE

- 8.3 The existing Code, in terms of standards of behaviour, seems to follow the Local Government Association’s (LGA) model code produced in 2009. There have been several subsequent changes to the legislation (eg Localism Act 2011) and the rules that sit behind such codes. The LGA therefore issued a new model code in 2013. Havering’s Code does not seem to pick these up and is therefore out of date in some places.
- 8.4 The new Code, based on the LGA 2013 model code, will cover the following areas:
- Aim of the Code
 - Role and conduct of Councillors and officers
 - Interests: registration and disclosure
 - Bias: predisposition/predetermination
 - Applications submitted by the Council, Councillors or officers
 - Lobbying of and by Councillors
 - Pre-application discussions
 - Post-submission discussions
 - Planning appeals
 - Planning enforcement
 - Councillor training
- 8.5 This can replace the current “Protocol on probity in planning matters” and should be in Part 5 of the Constitution: Codes and Protocols.

9 MEMBER BRIEFING

- 9.1 The proposals in this report were presented to an all-Member Briefing on 29 January 2018 in the Council Chamber. The main proposal to increase member involvement in strategic applications, particularly at the pre-application stage, was broadly welcomed. Comments were made on the following areas:

- Can a substitute (for ward members or local residents) attend to present: it was confirmed that they could.
- Clarification that the role of committee was not to hold officers to account (in the manner of a scrutiny committee) but to deliver the council's planning policies through positively enabling development.
- Concern about the need to ensure member capacity to support 2 x committees: it was acknowledged that two committees may prove to be unnecessary, but the 2-committee model was recommended initially to ensure there was sufficient capacity and, as set out in paragraph 4.4 above, will be kept under review. It was pointed out that each committee could comprise the same members – that was a matter for the Political Parties.
- It was felt desirable to retain members on the committee so they gain expertise: this is agreed, but again it is a matter for the Political Parties.
- Concern that a petition of over 50 signatories may be too high a hurdle: it was confirmed that this was a standard number used in many Councils, but the Head of Planning has discretion to refer any planning matter to committee and where there was a good reason to accept a smaller petition (such as in an area with very few dwellings) that discretion could be exercised.
- Public speaking timings were being brought into line with best practice which means all speakers get the same time (3 minutes in PC and 5 minutes in SPC). The public/applicants currently have 2 minutes and members 4 minutes. There was debate over these timings but it was not resolved.

10 CONCLUSIONS

- 10.1 This report covers the areas necessary to bring the Constitution up-to-date with respect to planning procedures and responsibilities and to enable it to deal with the expanded workload the regeneration and growth strategy is generating. It is hoped that the new elements have been clearly set out and that the new procedures will prove to be useable for members, officers and the public.

IMPLICATIONS AND RISKS

Financial implications and risks: The recommendations in this report should be cost neutral, but it is not possible to be definite at this stage as new procedures are proposed and their effectiveness will depend on how they are used by the public and members. There may be cost implications for the Members' Allowance Scheme if the membership of the two planning committees, or the Chair arrangements, are different. Members are paid only one Special Responsibility Allowance and accordingly any increase to the overall Members' Allowance Scheme will depend on appointment choices. The operation of the new committees should be reviewed after they have been in operation for a year.

Legal implications and risks: This report and its recommendations have been drafted with the advice and assistance of the Council's Legal and Democratic Services to ensure they comply with the law and other requirements. A large part of the drafting changes are included to ensure the Council is in a strong position to avoid challenge to the operation of its planning committee.

Human Resources implications and risks: There are no human resources implications arising from the recommendations in this report because it will be managed by existing resources; however this will be kept under review.

Equalities implications and risks: The changes proposed are a combination of best practice and legal requirements and relate primarily to committee procedures and members' probity protocols. There are no specific equalities implications for people, including those with protected characteristics. An EA is therefore not necessary.

APPENDICES

APPENDIX A

RATIONALE FOR MAIN CONSTITUTION AMENDMENTS

This appendix sets out the detailed considerations behind the proposed changes summarised in the Report Details in the main report.

1 RESPONSIBILITY FOR FUNCTIONS

- 1.1 Part 3 of the Constitution defines, in section 1 under Council Functions, what broad matters Council has delegated to committees, like RSC, to deal with. This just confines each committee to dealing with certain things, as it would be odd if, for example, planning committee suddenly decided that it wanted to determine licensing applications and the Constitution didn't stop them!
- 1.2 Precisely when a committee deals with these matters is set out in a delegation scheme, which in LB Havering is called the "functions delegated to staff" and is in part 3, section 3 of the Constitution. Part 3, section 4 deals with the statutory requirement of defining the responsibilities between Full Council and Cabinet and is called the "Functions Not the Responsibility of the Executive".

2 COUNCIL FUNCTIONS

- 2.1 This is where the new planning committees will be created and defined. Part 3 Section 1.2 contains a table setting out the functions that are delegated to each of the Council's general committees to deal with. For RSC it states:

Committee	Functions
Regulatory Services	<p>Health and safety To carry out functions relating to health and safety under any "relevant statutory provision" within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council's capacity as employer</p> <p>Highways use and regulation To exercise powers relating to the regulation of the use of highways as set out in Part 3, section 4: functions not to be the responsibility of an authority's or to staff</p> <p>Planning and conservation To carry out functions relating to town and country planning and Planning Control as specified in:</p> <ul style="list-style-type: none"> Part 3, section 4: functions not to be the responsibility of an authority's Executive Part 3, section 5: local choice functions that are not delegated to staff <p>Urban Development Corporation To form planning views on behalf of the Council in its role as consultee on applications to be decided by the Board of the Urban Development Corporation</p>

- 2.2 It will be necessary to delete the two sections headed “Planning and Conservation” and “Urban Development Corporation” (this relates to the London Thames Gateway Development Corporation, which no longer exists) for that committee. The residual functions of RSC will be allocated to the new Planning Committee.
- 2.3 To create and define the two new planning committees, a new section will be added to the table. This should contain three things, as appropriate for each committee:
1. SPC to receive presentations in the pre-application or pre-determination stage
 2. Specify the application types that both committees can deal with (see next section), rather than the current approach of cross referencing to other parts of the Constitution which can result in confusion and unintended consequences
 3. A catch-all for the [Head of Planning] to refer planning matters to committee

APPLICATION TYPES

- 2.4 The Constitution (part 3 section 3.6) sets out a long list of application types and sizes (over a page in length) that can be approved by officers, meaning the residual application types must always go to committee. This is a very odd way of drafting a delegation scheme as it can result in minor matters having to go to committee just because they were not included, plus it has some very low thresholds: eg, three houses or more must go to RSC. A different approach is needed where matters are delegated to officers unless there is some specific trigger that sends a particular application to committee. This part of the Constitution will identify the application types that the new committees will deal with. The triggers will be in the Committee Consideration Criteria in the Committee Procedure Rules.
- 2.5 It is recommended that there are only two application types that should go to planning committee:
1. Applications for planning permission
 2. Applications for listed building consent (often associated with an application for planning permission)
- 2.6 Applications for planning permission has a statutory meaning, so it is a good term to use, and includes the following:
- applications for outline planning permission
 - applications for full planning permission
 - applications to vary or delete conditions under s73 (this would include more significant “material” amendments).
- 2.7 The other application types we deal with under planning legislation are either very minor and raise no significant issues, are limited in the way they can be determined (ie they are confirming what a legal position is and no judgement is exercised) or are very specialised and determination is driven by expert opinion (either from council experts or external bodies). These other application types include:

- Approval of reserved matters: committees do not normally deal with these, but if they wished to be involved in the determination of a specific matter they can indicate that when determining the outline application
- Approval of conditions: these are minor matters
- Amendments to planning permissions under s96A: you can only permit an amendment where it is non-material, ie it has no materially different impact
- Advertisement consent: these are minor matters
- Hazardous substances consent: in practice, we must do what the Health and Safety Executive say
- Tree preservation order consents and trees in conservation areas notifications: these are highly specialised and the determination is driven by expert opinion
- Prior Notifications: permitted development with specified limited matters to be considered within a very tight timescale
- Certificates of lawful development: confirm a legal position with no planning judgement

2.8 None of these should come to committee, other than where the [Head of Planning] considers that it is necessary, which would be very rare.

ENFORCEMENT ACTION

2.9 The taking of enforcement action should be delegated and not be within the committee's remit, as is largely the case in Havering. However, according to section 4, there are some less-often used enforcement powers that are not delegated, such as completion notices, discontinuance orders and repair notices on listed buildings. The reason for these anomalies could have been that there may have been a fear of the Council being exposed to compensation or other unbudgeted expenditure. However, that should not be a reason for excluding them as delegated powers, because the exercise of any delegation is limited by the general provisions in section 3 which state in paragraph 3.1(b) that any such expenditure is, "subject to there being sufficient approved provision within the budget to cover that expenditure". The new drafting will therefore make all planning enforcement delegated.

LEGAL AGREEMENTS

2.10 Where a s106 agreement is necessary to make a development acceptable, that is intrinsically linked to the consideration of the planning application. An application should not need to come to committee merely because it has a s106 agreement. This should be delegated to officers. Section 4 of the Constitution currently puts all s106 agreements to committee, which is unnecessary.

RECOMMENDATION

2.11 Accordingly, the new section in the table for SPC & PC is recommended to be:

Committee	Functions
Strategic Planning	<ol style="list-style-type: none"> 1) To receive presentations in the pre-application or pre-determination stage. 2) To determine: <ol style="list-style-type: none"> a) Applications for Planning Permission; or b) Applications for Listed Building Consent; which, in the opinion of the [Head of Planning] acting in his or her discretion, raise strategic issues and should be determined by the Strategic Planning Committee. 3) Any other planning matter which, in the opinion of the [Head of Planning] acting in his or her discretion, raises strategic issues and should be referred to the Strategic Planning Committee.
Planning	<p>Planning</p> <ol style="list-style-type: none"> 1) To determine: <ol style="list-style-type: none"> a) Applications for Planning Permission; or b) Applications for Listed Building Consent; except where they are referable to the Strategic Planning Committee. 2) Any planning matter referred to the Planning Committee by the [Head of Planning] acting in his or her discretion. <p>Health and safety To carry out functions relating to health and safety under any “relevant statutory provision” within the meaning of Part 1 of the Health and Safety at Work Act 1974, to the extent that those functions are discharged otherwise than in the Council’s capacity as employer.</p> <p>Highways use and regulation To exercise powers relating to the regulation of the use of highways as set out in Part 3, section 4: functions not to be the responsibility of an authority’s or to staff.</p>

3 DELEGATION SCHEME

- 3.1 This should be where you check whether a matter is delegated to officers to deal with or if a committee should deal with something. The way the Constitution is currently drafted makes this very difficult to understand. The main problems are:
- Part 3, section 3.6 sets out the specific matters delegated to named officers. However, within the text there are, by implication in some cases and explicitly in others, matters that need to be determined by RSC. This results in a confusing and complex document that, because RSC matters are not clearly identified, can leave gaps where it is not clear where responsibility lies.
 - Part 3, section 4 is a statutory requirement to set out the matters that are not executive functions. The table also delegates these matters to either officers or committees like RSC. This duplication sets up the potential for confusion and conflict between the matters in this table and those listed in

section 3.6. Furthermore, the conventional approach to the drafting of this table makes it difficult to produce a comprehensive position and keep it up-to-date.

- The Protocol on Probity in Planning Matters, in part 5 of the Constitution, contains further criteria that implies when RSC will deal with matters. This is both complex and potentially confusing as there are contradictions between these elements. For example, section 3.6 contains no triggers for objections but the Protocol states that objectors have the right to address the committee, which could be read as implying that if an application has an objection it must go to RSC so the right to address the committee can be exercised. That is not what happens, and nor is it the intention of the document, but this wording puts the council at risk of a judicial review and needs to be corrected.

3.2 What is proposed is the following general approach:

- Part 3, section 3.6 will have a clear statement of all matters that are delegated to the [Head of Planning]
- Part 3, section 4 will have a clear and comprehensive statement of all planning functions and who deals with them
- The new Planning Committee Procedure Rules will set out clearly the criteria that will trigger committee consideration of a matter that is within the committee's remit (as set out in part 3, section 1: council functions)

RECOMMENDATION: FUNCTIONS DELEGATED TO [HEAD OF PLANNING]

- 3.3 Appendix C sets out the functions of the Council that are delegated to the [Head of Planning] (part 3, section 3.6 of the Constitution). This is drafted as comprehensively as possible by covering all planning matters delegated from Council to officers and referring to the exceptions set out in part 3, sections 4, 5 and 6, rather than repeating them. This avoids any unintended consequences or gaps. It clearly indicates where the criteria for matters that are for planning committee are set out (ie in the Procedure Rules for the two new committees).
- 3.4 The draft also contains specific delegations to officers to cover planning matters that are referred to the Council to deal with (eg delegations from the GLA or a future development corporation) and how minor amendments to recommendations that have been agreed at Council, Cabinet or Planning Committee can be dealt with under delegated powers. This makes for a much more efficient planning process and protects the Council from judicial reviews.
- 3.5 In the current Constitution, the matters that were the responsibility of the former post of Head of Regulatory Service are set out at paragraph 3.6.6. An exercise has been carried out by Legal Services to redistribute the functions to the new AD post headings. Planning functions are grouped under the title Planning Control. What is drafted in Appendix C will replace what is currently under that title.

RECOMMENDATION: FUNCTIONS NOT THE RESPONSIBILITY OF THE EXECUTIVE

- 3.6 Appendix D sets out the newly drafted table of “Functions not to be the responsibility of the Executive” (part 3, section 4 of the Constitution) covering those functions relating to planning. It addresses the issue of conventional drafting outlined in the main report.
- 3.7 The way these tables are normally drafted is to list very specific powers, duties and responsibilities with respect to statutory functions and then to allocate them to officers or a committee as appropriate. The drawback with this approach is that some obscure or implicit powers may be missed and new powers or amendments to existing powers must be specifically included when they occur. It is very easy to miss this and expose the authority to judicial review. Several powers are missing from the current table.
- 3.8 A more generic approach, where reference is made to the parts of the Planning Act (or other relevant statutes) rather than specific sections, is better as it ensures that the scheme is automatically more comprehensive. This will also provide a much longer shelf-life for the table in the context of changes or additions to legislation, particularly where they are enacted as an amendment to existing legislation, which generally is how such changes are delivered by Parliament.

4 PLANNING COMMITTEE PROCEDURE RULES

- 4.1 The new set of Rules will cover the following areas:
- Committee Consideration Criteria
 - Public Speaking Procedure
 - Pre-Committee Matters
 - Committee Agenda
 - Order of Proceedings
 - Decision Making
 - Voting Procedures
 - Committee Performance
- 4.2 The proposed changes or new procedures in each area are highlighted below.

COMMITTEE CONSIDERATION CRITERIA

- 4.3 The final component that will determine when a Planning Committee Matter (ie an application for planning permission or listed building consent) will come to committee is the Committee Consideration Criteria. It is important that the rules around these matters are clear to ensure that the Council is in the strongest possible position where aggrieved applicants or objectors look to challenge decisions.
- 4.4 These criteria need to do two things in deciding what comes to committee:
1. Define what applications are strategically important and should always go to committee for approval
 2. Define what applications are controversial and therefore justifies a decision by committee

- 4.5 The first matter to consider is whether only recommendations to grant planning permission should go to committee and refusals are always delegated, as is Havering's current practice. It is recommended that the committee should only deal with approvals. The reason is that in negotiating applications where the applicant is refusing to budge on an issue, having the ability to say they "can have the refusal by close of play" often brings them to their senses. Where refusals are controversial (which is very rare and hard to define) the [Head of Planning] can use his or her discretion, and bring it to Planning Committee. The other important factor is that an aggrieved applicant has a right of appeal, so has an outlet. Current practice should therefore continue.

Defining strategically important

- 4.6 One way to define strategically important developments is to specify a number of dwellings, floorspace, site area etc. This is the approach used in the current constitution and is unnecessarily complex. In London, you have the Mayor of London Order which sets out a statutory definition of strategically important development. The thresholds contained therein are set by Parliament and cannot be unilaterally changed by the Mayor. Furthermore, they are part of the service's day-to-day working so, from an administrative perspective, it is very efficient to use that definition. The wording in the Order is set out in appendix E. The wording in the constitution would be:
- the application is within the categories which must be referred to the Mayor of London under the Town and Country Planning (Mayor of London) Order
- 4.7 This is a much simpler and clearer definition and is easier to incorporate into work procedures. It would reduce many of the application types that would automatically now come to committee for approval, but would be a logical approach to justify. The application types that are no longer defined as strategic would still come to committee for approval if they were triggered by the controversy criteria (eg level of objection, petition or member referral).

Departures from the development plan

- 4.8 The main consideration that drives decision making is the Development Plan. Other matters that can be considered must be material planning considerations. The statutory position (s38(6) of the 2004 Planning and Compulsory Purchase Act) requires that decisions MUST be in line with planning policy unless there are good and demonstrable planning reasons to do otherwise. There are special provisions in the statutory code to deal with significant departures from the development plan in a certain way. Such "departures" should come to planning committee for approval and the following wording is suggested:
- the application does not accord with the provisions of the Development Plan and, in the opinion of the [Head of Planning] acting in his or her discretion, constitutes a significant departure

Council's own development

- 4.9 The Council's own schemes must be treated no differently from any other development. However in the interests of openness, it is generally considered

good practice that any significant council own development should come to committee for approval irrespective of whether it receives objections or is referred by a Ward Councillor. The following wording is recommended:

- the application is by or on behalf of the Council and, in the opinion of the [Head of Planning] acting in his or her discretion, it is a significant development;

Defining controversial

4.10 In most Councils there is generally a threshold of the number of objections received in response to publicity and advertisement of planning applications that triggers committee determination. In Havering, the level of objection is not a trigger. Applications can only be determined at committee in these circumstances if a Ward Councillor, or in specified circumstances any Councillor, refers it. This approach places a huge emphasis on the referral process. It is recommended that a reasonable objection threshold (12 is suggested) be introduced, coupled with an adjustment of member referral procedures so that they are used less frequently. This could be seen as the democratisation of the planning committee by enabling Havering residents and businesses (in sufficient numbers) to trigger committee consideration. The rules around this would have to be carefully drafted.

4.11 Defining what constitutes an objection is very important. There are several approaches that can be used to act as a filter to weed out unnecessary matters going to committee:

1. Being clear about what constitutes an objection
2. Have a threshold of objection letters that needs to be received
3. Clear rules around petitions
4. How the Member referral procedure should operate
5. Creating a gatekeeping function to filter out unsuitable matters

4.12 These methods are generally used in combination and they will be explained in turn below.

Defining an objection

4.13 All representations that are made will be considered by officers, but it is important to be clear which ones (cumulatively) can trigger committee consideration. They need to be defined carefully (to avoid legal challenges) and it is recommended that it should be as follows:

An objection is a letter, an email or a petition from any party (Councillor, local resident, business etc) that meets all the following requirements:

- It is in response to an application that has been publicised or advertised by the Council
- It is not anonymous and includes the person's name and postal address
- It is from, or on behalf of, a person who lives at or operates from an address which is within the London Borough of Havering
- It is received by the Planning Service within the relevant timescales (these are the statutory consultation periods)
- It raises objections that are material planning considerations and are related to the application

- Any material planning objection raised cannot be overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s)
- 4.14 Identical or similar pro-forma letters or emails, which also meet the above requirements, will be treated as forming a Petition (ie, each letter potentially being a single signature on a petition) rather than being treated as individual Representations for the purposes of deciding whether they will trigger consideration by Planning Committee.

Level of objection

- 4.15 As stated earlier, a level of 12 objections is recommended. Additionally, objectors should be required to specifically state that they wish their objection to trigger committee consideration – the overall number target would still be required. Some objectors just want to make their case and do not necessarily wish that it should be considered by committee. This would also apply to petitions. This brings objectors and petitioners in line with the requirement for Councillors to do this. This would be made clear in the notification letters sent to neighbours etc on planning applications.

Petitions

- 4.16 A decision is needed on how many signatures are needed on a petition to trigger committee consideration. It is recommended that a requirement for 50 signatures would be reasonable for this. These should be clearly readable names and addresses from persons who own, live or operate from an address in Havering. The requirement for the petitioner to specifically state that they wish their petition to trigger committee consideration would also be included.

Member referral

- 4.17 It is important that a member referral procedure is properly designed and documented in the constitution. What constitutes a referral and the deadlines and procedures for their handling will need to be very clearly set out. Like other Representations, there should be a similar clear definition of what constitutes an appropriate referral request and, like individual or petition representations, clear time limits.
- 4.18 It is legitimate for members to be involved in the planning application process, to express their views and to have them considered. It is not appropriate for them to interfere with the process in a way that seeks to influence the outcome. The operation of the referral process in Havering does show signs of the latter, particularly the number of late referrals. This needs to be addressed as there is a danger that members may act unlawfully, or at least given that impression, if they try to refer an application to committee late in the process. It is important that the system of member referrals has integrity, is open and transparent and not susceptible to legal challenge.
- 4.19 Although the constitution states with respect to referrals, “If no such request is received by the deadline ... the Head of Regulatory Service may determine the application”, that deadline does not seem to be in the constitution. Any deadline has to be the statutory consultation period, because after that applications can, and should, be determined without delay (National Planning Policy Framework paragraph 14).

4.20 The following rules are recommended with respect to member referrals:

- Only a Councillor where the application site is within, partly within or adjoining their ward can refer an application for planning permission or listed building consent to committee.
- The current provision (in paragraph 3.6.6 of the Responsibility for Functions) for a Councillor, who is not a Ward Councillor, to refer an application in exceptional circumstances and with the approval of the [Head of Planning] to committee, is amended to make it clear that only applications that are within the remit of Strategic Planning Committee can be so referred.

4.21 This represents an expansion of the current position, to recognise that it may be legitimate for a non-ward Councillor to refer strategic applications to committee.

Gatekeeping

4.22 There does need to be a gatekeeper role, deciding which applications with representations (individual or petitions) over the trigger levels or with Ward Councillor referrals go on the committee agenda. The reason for this is that there is an expectation that if a member refers an application to committee, they are expected to attend the committee and explain their concerns. The same expectation would extend to local residents who regularly make representations, such as resident groups or amenity societies. To enable this requirement to be enforced, the Committee Consideration Criteria for Individual Representations, Petition Representations and Ward Councillor Representations would need to have words added along the lines of "... the [Head of Planning] (in consultation with the chairman) agrees to the item being placed on the Planning Committee agenda".

Recommendations

4.23 The new triggers for committee consideration would therefore be:

To approve Applications for Planning Permission or Applications for Listed Building Consent where at least one of the following applies:

- a) the application is within the categories which must be referred to the Mayor of London under the Town and Country Planning (Mayor of London) Order;
- b) the application does not accord with the provisions of the Development Plan and, in the opinion of the [Head of Planning] acting in his or her discretion, constitutes a significant departure;
- c) the application is by or on behalf of the Council and, in the opinion of the [Head of Planning] acting in his or her discretion, it is a significant development;
- d) Individual Representations have been received, in accordance with these Rules;
- e) a Petition Representation has been received, in accordance with these Rules; or
- f) a Representation from a Ward Councillor has been received, in accordance with these Rules.

- 4.24 Any application caught by these Criteria will be referred in the Rules collectively as a Planning Committee Matter. “In accordance with these Rules” will mean that Representations must meet both general requirements and specific referral criteria.
- 4.25 The general requirements are set out in paragraphs 4.13 and 4.14 above.
- 4.26 The specific referral criteria for individual, petition and Ward Councillor representations are set out below:

Individual Representations

- 4.27 A Planning Committee Matter may be reported to Committee where Individual Representations have been received that all meet the General Requirements for a Representation and additionally meet the following Criteria:
- Any Individual Representation clearly states that they wish the application to be determined by Committee; and
 - At least 12 such Representations have been received from individual properties within the London Borough of Havering for each application.
- 4.28 Representations for each application are those that are received from individual properties within the London Borough of Havering, ie not one from each member of a family, a household or a business within a property. If several objections are received from a single property, they will be treated as a single objection.

Petition Representations

- 4.29 A Planning Committee Matter may be reported to Committee where one or more Petition Representations (including pro-forma letters) have been received that all meet the General Requirements for a Representation and additionally meet the following Criteria:
- Any Petition Representation clearly states that they wish the application to be determined by Committee; and
 - All such Petitions must total at least 50 signatures with clearly readable names and addresses from persons who own, live at or operate from an address which is within the London Borough of Havering.
- 4.30 Where such petition(s) contain less than 50 such signatories they will individually (in the case of each petition) or collectively (in the case of pro-forma letters) be treated as each forming a single Individual Representation for the purposes of deciding whether a Planning Committee Matter will be referred to Committee.

Ward Councillor Representations

- 4.31 A Planning Committee Matter may be reported to Committee where a Councillor for the ward within which the application site is situated or adjoins has made a Representation that meets the General Requirements for a Representation and additionally meets all the following Criteria:
- The application site is within, partly within or adjoining the Councillor's ward;
 - It clearly states that the Councillor wishes the application to be determined by Committee;

- It gives specific reasons for this that relate solely to matters that are material planning considerations and justify consideration by Planning Committee rather than under delegated powers – just saying that the Councillor considers that the matter should be determined by Planning Committee will not be sufficient;
 - It states whether the Councillor has been approached by any person concerning the application; and
 - If so, provides details of that contact, including the identity of the person(s).
- 4.32 A Councillor, who is not a Ward Councillor, may request that a Planning Committee Matter be reported to committee if they consider that there are exceptional circumstances that justify it. The decision as to whether such a matter is reported to committee is for the [Head of Planning], acting in his or her discretion, to make. Generally, only matters that are within the remit of Strategic Planning Committee will be accepted under this provision.

PUBLIC SPEAKING PROCEDURE

- 4.33 The resolution from Full Council requires the right of members to speak at committee to be reviewed. It is clear that Councillors within whose ward the application site is situated have such a right. The issue is the right of non-ward Councillors to address committee.
- 4.34 The current provision is set out in para 13 of the Committee Procedure Rules. This relates the right to speak with the right to call-in applications; members who do so are expected to address the committee on their call-in request. Non-ward Councillors can only call-in applications to committee in exceptional circumstances and the decision is for the [Head of Planning] to make.
- 4.35 In line with the proposed clarity around call-in rights set out above (paras 4.20 and 4.21) the same approach will be employed with respect to speaking rights for Councillors. The procedures around addressing committee will be based on the following principles:
- Clarity that for both committees there are up to three Councillor slots, but also clarity that Councillors should avoid duplication and coordinate their attendance at committee in the interest of efficiency.
 - For PC, the Councillor slots are for Councillors where the application site is within, partly within or adjoining their ward only, as these applications generally raise local issues. Non-ward Councillors and non-referring ward Councillors do not have a right to address the committee. The chair's discretion would remain but the default position would be clearly set out.
 - A non-ward Councillor can register as an objector and address the committee. The current procedure requires that a registering objector must have submitted an objection. This requirement is an unnecessary complication and the new rules just require that an objector registers (on a first come basis – as now).
 - For SPC, the three Councillor slots are open to all Councillors, but priority will be in the following order:
 - Referring ward Councillors
 - Referring non-ward Councillors
 - Non-referring ward Councillors

- Non-referring non-ward Councillors
- The ability of cabinet members to address the SPC on strategic cases to raise significant issues for their portfolio area will be included and this will be an additional slot over and above the other Councillor slots. However, where the council is the applicant and the promoting Cabinet Member wishes to address committee, this should be done in the applicant's slot; they should not use the cabinet member slot.
- Ward Councillors are able to address SPC on Development Presentations (again, three speaking slots a maximum of five minutes each), but they should confine their presentations to commenting on aspects of the development (eg its design, highway impacts, level of affordable housing etc) and not objecting to the principle of the development or the scheme as a whole. The reason for this is that the pre-application process is where the Council should work to improve schemes so they can be approved. The time for objecting to the development is once the application is made.

4.36 Other general public speaking procedural changes are as follows:

- In the interests of natural justice, most councils have slots of the same length. Therefore, all slots (ie the registered objector, a responding applicant and any councillors) will be 3-minutes long in PC and 5-minutes long in SPC.
- All speakers (objectors, responding applicants and Councillors) must register 15 minutes before the start of the meeting.
- Where an item is on the agenda solely because of the level of objections, a petition, or a Councillor referral, and nobody registers to address the committee before the meeting starts, that item comes off the agenda and be dealt with under delegated powers.

PRE-COMMITTEE MATTERS

4.37 The main issues here are to make it clear that committee members should raise areas of concern with officers in advance of the meeting wherever possible and to clarify the expectations and procedures around site visits. Essentially capturing current practice, that it is the responsibility of Members to be familiar with the sites on the agenda.

COMMITTEE AGENDA

4.38 The agenda will be divided into sections as follows:

1. Development presentations (SPC only)
2. Applications for decision
3. Other planning matters (eg an Article 4 Direction)
4. Items for information

4.39 Only item 2 would attract public speaking rights.

General delegations

4.40 In the reports to Committee an approach where they do not set out the full wording of planning conditions, reasons for refusal, informatives and planning obligations, but are a summary of them, will be adopted. A fully worded draft decision notice would have been prepared which would be available to look at

any detail, if needed. This approach is considered better for the following reasons:

- it communicates the details of the recommended decision more clearly to Members and the public than many pages of detailed conditions or grounds; and
- there can sometimes be a delay before a decision is issued (such as waiting for the signing of a legal agreement or views from the Mayor of London and/or the National Planning Case Unit) and something may arise which necessitates an amendment, a deletion or an addition.

- 4.41 It will therefore be necessary in the procedure rules to delegate to the [Head of Planning] the power to communicate the detailed wording of committee decisions to applicants.

Update Report

- 4.42 It is important to set a deadline for matters to be included in the Update Report. Having to deal with last-minute submissions should be avoided. In addition, the report should be emailed to Planning Committee Members in advance of the meeting so that they have a bit longer to read it. It is therefore recommended that the deadline by which material must be received in the service will be noon on the day of the meeting. Generally, material received after this time will not be reported to the Committee unless the [Head of Planning] considers it necessary. The [Head of Planning] must have an absolute discretion in this regard

ORDER OF PROCEEDINGS

- 4.43 This will set out how each item on the agenda will be dealt with, such as in what order the speakers are heard etc. it is not proposed to change what is standard practice at Havering in this area other than to split the officer presentation so that before the speakers, officers introduce the application (ie describe the development), and after the speakers, they will outline the material planning considerations that led to the recommendation. This will also give officers the opportunity to pick up any issues that may have come up in public speaking.
- 4.44 Part 4, section 8 of the general Committee Procedures Rules, sets a 2½ hour guillotine for committees like RSC, but this does not seem to be followed. Many Councils adopt this, as very late Planning Committees are not helpful to anyone. It is recommended sticking to the 2½ hour length with the provision of an extra 30 minutes to finish off the item that was started before the guillotine.
- 4.45 Items that have not been determined within the guillotine time limits should be automatically delegated to officers to determine in accordance with the recommendation set out in the report, unless the meeting determines otherwise by way of a resolution made prior to the guillotine and agreed on a majority vote. Generally, it would only be items that remain undetermined for which there are speakers that would be voted on to extend the guillotine time to deal with them. Other items should normally be left to officers to determine under delegated powers. This is a more efficient approach than having to reconvene the meeting to deal with undetermined items, especially ones that are uncontroversial.

DECISION MAKING

- 4.46 This brings together probity advice around decision making, so it is all in one place.

VOTING PROCEDURES

- 4.47 It is much better if the voting convention in Planning Committee is that the recommendation is voted on first, rather than having motions moved and seconded. The reason for this is that when the committee is looking to go against the officer recommendation, this triggers a critical set of procedures that are designed to protect the Council's interests. As will be explained below, there are circumstances where this might result in the item being deferred. Therefore, it is important to know that the committee wants to go down this road; hence they should decide first whether they agree the recommendation in the report. The recommendation can be amended (eg adding or varying a condition) before the vote in the usual way.
- 4.48 In all cases where the committee departs from the recommendation (either an alternative one or an amendment) the Rules will say that they must receive and consider advice from the [Head of Planning] or his or her representative on the proposed changes. Where the officer considers that he/she is unable to give that advice in the meeting, further consideration of the matter will be suspended and the agenda item will be adjourned so that a report can come to the next available committee setting out the advice, if necessary on the private business part of the agenda if legal advice is required. The reason for this is to avoid the situation where officers must advise in the meeting that grounds of refusal are weak or not defensible at appeal or that there is a risk of costs being awarded against the Council.
- 4.49 The legal requirement to accurately record reasons for decisions will also be clearly set out so that decisions that go against the recommendation in the report are soundly made and recorded, so that they are not liable to judicial review.

COMMITTEE PERFORMANCE

- 4.50 This section is necessary to make sure that both committees perform in the way that is expected, in the same way as the planning service generally is so monitored. This is designed to ensure that the issues behind the designation risk that has emerged are picked up earlier and addressed through routine monitoring of both performance and quality indicators.

APPENDIX B

CONSEQUENTIAL MINOR CONSTITUTION AMENDMENTS

The following miscellaneous amendments will be needed to the Constitution:

PART 1: SUMMARY OF THE CONSTITUTION

7. Other Committees (pg 7)

Reference needs to be made to the new SPC/PC.

PART 2: THE ARTICLES OF THE CONSTITUTION

Article 3: Citizens and the Council

3.02 Participation (pg 15):

Needs to exclude SPC/PC, as their public speaking rules will be set out in their own committee procedure rules – should not be up to the committees as consistency is vital – only the chair will have discretion.

Article 9: Decision making

9.05 Referral of decision maker to higher authority (pg 23):

SPC/PC have their power delegated from Council – it is very rare for such committees to refer planning matters back to full council – this should be excluded by adding a new paragraph that says:

“Decisions of the SPC/PC cannot be referred to another body (except officers), including to the council.”

9.06 Decision making (pg 23):

Need to refer to new SPC/PC Procedure Rules by adding new text at the end of paragraph (d) which states:

“... and the SPC/PC will additionally follow the SPC/PC procedure rules set out in part 4 of this Constitution.”

9.08 Party Whip (pg 23):

Need to change the reference from RSC to SPC/PC.

Article 12: Suspension, interpretation and publication of the Constitution

12.01 Suspension of the Constitution, (c) Rules capable of suspension (pg 27):

Reference to Planning Committee Rules will be needed so that they cannot be suspended other than as stated in the Rules, which will usually be at the chair's discretion.

Appendix to Articles (pg 28)

This will need a reference to the make-up of the new SPC/PC and their sizes. It is recommended that:

- SPC to be seven members
- PC to be eleven members
- The rules for RSC on membership requirements state, “... of whom only one may be an Executive Member, or two if one is acting as a substitute” – it is recommended that this be deleted as Cabinet members, on SPC in particular, is

beneficial and encouraged by the Local Government Association and the Planning Advisory Service.

- It is also recommended that the following is added:
“When the membership of the committee is determined, there should always be at least one Councillor in each Ward who is not a member of SPC or PC to ensure that there will always be a Councillor with whom residents will be able to discuss planning matters.”

PART 4: RULES OF PROCEDURE

Committee Procedure Rules (pgs 179 - 189)

Need to delete/amend the following as they will be in the SPC/PC Procedure Rules:

7. Attendance at Committee

(e) Members of the public wishing to address the committee (pg 182)

Need to add the note,

“This rule shall not apply to SPC/PC as the public speaking procedures for these committees are set out in their own committee procedure rules.”

8 Conclusion of meetings (pg 182)

PC/SPC will have its own guillotine rules as they need to operate slightly differently. Therefore, need to add a new paragraph between (a) & (b) which says,

“The rules for the conclusion of SPC/PC meetings are set out in their own committee procedure rules.”

13 Regulatory Services Committee (pg 184)

This relates to public speaking and will be covered in the new SPC/PC procedure rules, so should be deleted. There may need to be a note somewhere – perhaps here – that SPC/PC does have a separate set of procedural rules.

18 Training and continuity of membership of certain committees (pg 188)

This allows a member to be on SPC/PC for 6 months with no training. Best practice is that all SPC/PC members and substitute members must receive basic training on planning and probity before being able to sit on committee. They should also be obliged to keep up-to-date by attending other training offered. This will be covered in the Committee Procedure Rules, so the following sentence should be added at the end of paragraph (a):

“The rules for training of SPC/PC members are set out in their own committee procedure rules.”

APPENDIX C

FUNCTIONS DELEGATED TO STAFF

The following amendments to part 3, section 3.6 of the Constitution are proposed:

[HEAD OF PLANNING]

1. To deal with planning related matters in the following parts of the Constitution:
 - a. part 3 section 4: functions not to be the responsibility of the Executive;
 - b. part 3, section 5: local choice functions; and
 - c. part 3 section 6: proper officer functions,
2. except where it is indicated that it is a matter that:
 - a. is required to be determined by SPC/PC in accordance with the Committee Consideration Criteria in the Planning Committee Procedure Rules;
 - b. is an Executive function and is dealt with at Cabinet or by a Cabinet Member delegation; or
 - c. is retained by Council to determine.
3. Planning related matters delegated to the Council by other bodies except where a matter is required to be determined by Planning Committee in accordance with the Committee Consideration Criteria in the Planning Committee Procedure Rules.
4. Where Cabinet or Council determines an item on an agenda:
 - a. in the event of changes being made to an officer recommendation by Cabinet/Council, the task of formalising the wording of those changes, within the substantive nature of the Cabinet/Council decision, is delegated to the Report Author;
 - b. the Report Author has delegated authority to make changes to the wording of the Cabinet/Council decision prior to the decision being actioned, provided that the Report Author is satisfied that any such changes could not reasonably be regarded as deviating from the overall principle of the decision reached by Cabinet/Council nor that such changes could reasonably have led to a different decision having been reached by Cabinet/Council.
5. Where Planning Committee determines an item on an agenda:
 - a. in the event of changes being made to an officer recommendation by the committee, the task of formalising the wording of those changes, within the substantive nature of the committee decision, is delegated to the [Head of Planning];
 - b. the [Head of Planning] has delegated authority to make changes to the wording of the committee decision (such as to delete, vary or add conditions, informatives, planning obligations or reasons for the decision) and to accept changes to the application prior to the decision being actioned, provided that the [Head of Planning] is satisfied that any such changes could not reasonably be regarded as deviating from the overall principle of the decision reached by the committee nor that such changes could reasonably have led to a different decision having been reached by the committee.
6. Any other planning related matter delegated from Council to officers.

APPENDIX D

FUNCTIONS NOT THE RESPONSIBILITY OF THE EXECUTIVE

The following amendments to part 3, section 4 of the Constitution are proposed:

FUNCTIONS RELATING TO PLANNING

Function	Provision of Act or Statutory Instrument	Decision making body
Functions relating to development plans	Part 2 of the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004	[Head of Planning], except where: <ul style="list-style-type: none"> approval by the Executive is required for consultation on a Local Development Framework Document; approval by the Executive is required for adoption of a Supplementary Planning Document, the Local Development Scheme, the Statement of Community Involvement or the Authority's Monitoring Report; approval by Council is required for submission or adoption of a Development Plan Document
Functions relating to control over development (including the assessment of environmental effects)	Part 3 of the Town and Country Planning Act 1990	[Head of Planning], except where: <ul style="list-style-type: none"> an application for Planning Permission is required to be determined by Planning Committee in accordance with the Committee Consideration Criteria in the Planning Committee Procedure Rules
Functions relating to planning enforcement	Part 7 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to special planning controls (e.g. trees, amenity land and advertisements)	Part 8 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to highways and planning	Part 10 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to statutory undertakers and planning	Part 11 of the Town and Country Planning Act 1990	[Head of Planning]

Function	Provision of Act or Statutory Instrument	Decision making body
Functions relating to Crown land and planning	Part 13 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to financial provisions for planning	Part 14 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to miscellaneous and general planning provisions (e.g. rights of entry)	Part 15 of the Town and Country Planning Act 1990	[Head of Planning]
Functions relating to listed buildings	Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990	[Head of Planning], except where: <ul style="list-style-type: none"> an application for Listed Building Consent is required to be determined by Planning Committee in accordance with the Committee Consideration Criteria in the Planning Committee Procedure Rules
Functions relating to conservation areas	Part 2 of the Planning (Listed Buildings and Conservation Areas) Act 1990	[Head of Planning], except where: <ul style="list-style-type: none"> approval of the Executive is required to designate a conservation area
Functions relating to general matters relating to listed buildings and conservation areas (e.g. Crown land and rights of entry)	Part 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990	[Head of Planning]
Functions relating to controls over hazardous substances	Planning (Hazardous Substances) Act 1990	[Head of Planning]
Functions relating to Certificates of Appropriate Alternative Development	Part 3 of the Land Compensation Act 1961	[Head of Planning]
Functions relating to the control of advertisements, displays etc	Part 3 of the London Local Authorities Act 1995	[Head of Planning]
Functions relating to surveillance and covert human intelligence sources	Part II of the Regulation of Investigatory Powers Act 2000	[Head of Planning]

Function	Provision of Act or Statutory Instrument	Decision making body
Functions relating to the civil recovery of the proceeds etc of unlawful conduct	Part 5 of the Proceeds of Crime Act 2002	[Head of Planning]
Functions relating to charging for discretionary services	Part 8 Chapter 1 of the Local Government Act 2003	[Head of Planning]
Functions relating to Nationally Significant Infrastructure Projects	Parts 1 to 9 of the Planning Act 2008	[Head of Planning]
Functions relating to the Community Infrastructure Levy	Part 11 of the Planning Act 2008	[Head of Planning], except where: <ul style="list-style-type: none"> • approval by Council is required to submit a draft charging schedule for examination, approve a charging schedule or withdraw a charging schedule • approval by the Executive is required to consult on or adopt a new or amended Regulation 123 List
Functions relating to Neighbourhood Planning	Part 6 Chapter 3 of the Localism Act 2011	[Head of Planning], except where: <ul style="list-style-type: none"> • approval by the Executive is required to authorise a Plan to be put to referendum or to agree that a Plan be Made
Functions relating to self-build and custom house building	Part 1 Chapter 2 of the Housing and Planning Act 2016	[Head of Planning]

APPENDIX E

MAYOR OF LONDON ORDER

The Town and Country Planning (Mayor of London) Order 2008 sets out in a schedule Potentially Strategically Important (PSI) applications for planning permission. These are referred to the GLA for comment and potentially for determination by the Mayor.

It is recommended that this is a useful definition (by Parliament) of what constitutes a strategic planning matter across London and therefore in Havering.

The criteria for PSIs are grouped into three parts: large scale developments, major infrastructure and development which may affect strategic policies. The criteria in the Order vary for different parts of London. Those applicable to Havering are set out below.

1. Large Scale Developments

- A. Development which comprises or includes the provision of more than 150 dwellings (*Government have consulted on reducing this to 50*)
- B. Development which comprises or includes the erection of a building or buildings with a total floorspace of more than 15,000 square metres
- C. Development which comprises or includes the erection of a building of one or more of the following descriptions:
 - a) the building is more than 25 metres high and is adjacent to the River Thames;
 - b) the building is more than 30 metres high
- D. Development which comprises or includes the alteration of an existing building where the development would increase the height of the building by more than 15 metres and the building would, on completion of the development, fall within a description set out in Category C above

2. Major Infrastructure

- A. Development which comprises or includes mining operations where the development occupies more than 10 hectares
- B. Waste development to provide an installation with capacity for a throughput of more than:
 - a) 5,000 tonnes per annum of hazardous waste; or
 - b) 50,000 tonnes per annum of waste;
 produced outside the land in respect of which planning permission is sought; or
 Waste development where the development occupies more than one hectare.
- C. Development to provide:
 - a. an aircraft runway;
 - b. a heliport (including a floating heliport or a helipad on a building);
 - c. an air passenger terminal at an airport;
 - d. a railway station or a tram station;
 - e. a tramway, an underground, surface or elevated railway, or a cable car;
 - f. a bus or coach station;
 - g. an installation for a use within Class B8 (storage or distribution) of the Schedule to the Use Classes Order where the development occupies more than 4 hectares;
 - h. a crossing over or under the River Thames; or

- i. a passenger pier on the River Thames.
Development to alter an air passenger terminal to increase its capacity by more than 500,000 passengers per year.
Development for a use which includes the keeping or storage of buses or coaches where:
 - a. it is proposed to store 70 or more buses or coaches or buses and coaches; or
 - b. the part of the development that is to be used for keeping or storing buses or coaches or buses and coaches occupies more than 0.7 hectares.
- D. Waste development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated and which falls into one or more of these sub-categories:
 - a. it occupies more than 0.5 hectares;
 - b. it is development to provide an installation with a capacity for a throughput of more than:
 - 1. 2,000 tonnes per annum of hazardous waste; or
 - 2. 20,000 tonnes per annum of waste.

3. Development Which May Affect Strategic Policies

- A. Development which is likely to:
 - a. result in the loss of more than 200 houses, flats, or houses and flats (irrespective of whether the development would entail also the provision of new houses or flats); or
 - b. prejudice the residential use of land which exceeds 4 hectares and is used for residential use
- B. Development:
 - a. which occupies more than 4 hectares of land which is used for a use within Class B1(business), B2 (general industrial) or B8 (storage or distribution) of the Use Classes Order; and
 - b. which is likely to prejudice the use of that land for any such use
- C. Development which is likely to prejudice the use as a playing field of more than 2 hectares of land which:
 - a. is used as a playing field at the time the relevant application for planning permission is made; or
 - b. has at any time in the five years before the making of the application been used as a playing field
- D. Development:
 - a. on land allocated as Green Belt or Metropolitan Open Land in the development plan, in proposals for such a plan, or in proposals for the alteration or replacement of such a plan; and
 - b. which would involve the construction of a building with a floorspace of more than 1,000 square metres or a material change in the use of such a building
- E. Development:
 - a. which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated; and
 - b. comprises or includes the provision of more than 2,500 square metres of floorspace for a use falling within any of the following classes in the Use Classes Order:
 - 1. class A1 (retail)

2. class A2 (financial and professional)
 3. class A3 (food and drink)
 4. class A4 (drinking establishments)
 5. class A5 (hot food takeaways)
 6. class B1 (business)
 7. class B2 (general industrial)
 8. class B8 (storage and distribution)
 9. class C1 (hotels)
 10. class C2 (residential institutions)
 11. class D1 (non-residential institutions)
 12. class D2 (assembly and leisure)
- F. Development for a use, other than residential use, which includes the provision of more than 200 car parking spaces in connection with that use
- G. Development which:
- a. involves a material change of use;
 - b. does not accord with one or more provisions of the development plan in force in the area in which the application site is situated,
 - c. where the application site is used or designed to be used wholly or mainly for the purpose of treating, keeping, processing, recovering or disposing of refuse or waste materials; and
 - d. the application site:
 1. occupies more than 0.5 hectares; or
 2. contains an installation with a capacity for a throughput of more than 2,000 tonnes per annum of hazardous waste; or
 3. contains an installation with a capacity for a throughput of more than 20,000 tonnes per annum of waste
- H. Development which:
- a. comprises or includes the provision of houses, flats or houses and flats;
 - b. does not accord with one or more provisions of the development plan in force in the area in which the application site is situated; and
 - c. is on a site that is adjacent to land used for treating, keeping, processing, recovering or disposing of refuse or waste materials with a capacity for a throughput of more than:
 1. 2,000 tonnes per annum of hazardous waste; or
 2. 20,000 tonnes per annum of waste
- I. Development which:
- a. involves a material change of use;
 - b. does not accord with one or more provisions of the development plan in force in the area in which the application site is situated; and
 - c. is either:
 1. on a site that is used for keeping or storing 70 or more buses or coaches or buses and coaches; or
 2. on a site on which an area of over 0.7 hectares is used for keeping or storing buses or coaches or buses and coaches

APPENDIX F

PLANNING COMMITTEE PROCEDURE RULES

The following to be inserted into Part 4 Rules of procedure of the Constitution:

Contents

1. Introduction
2. Committee Consideration Criteria
3. Public Speaking Procedure
4. Pre-Committee Matters
5. Committee Agenda
6. Order of Proceedings
7. Decision Making
8. Voting Procedures
9. Committee Performance

1 INTRODUCTION

- 1.1 These Rules apply to all meetings of the Council's Planning Committees in relation to the determination of planning applications and any other business dealt by the committee.
- 1.2 When the term "Councillor" is used, it means that the text is applicable to all Members of the Council. The term "Planning Committee Councillor" means a Member or a substitute Member of the Council's Strategic Planning Committee or Planning Committee.
- 1.3 The determination of planning applications is a statutory administrative process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by aggrieved parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman. To mitigate these risks, it is vital that those involved in the determination of planning applications, and particularly officers and Councillors, act reasonably and fairly to applicants, supporters and objectors.
- 1.4 These Rules are designed to help ensure that this is achieved, but they should not be read in isolation. Councillors need to also have regard to the Planning Code of Good Practice (the Planning Code) within this Constitution. Whilst both these Rules and the Planning Code interpret the Members' Code of Conduct with respect to planning matters, they are subordinate to the Members' Code of Conduct and, in the event of any inconsistencies arising between these Rules and the Members' Code of Conduct, the latter shall prevail.

2 COMMITTEE CONSIDERATION CRITERIA

- 2.1 Part 3 of the Constitution (Responsibilities for functions) sets out what functions are the responsibilities of committees and the functions delegated to staff.
- 2.2 Part 3.1.2 (Functions delegated to general council committees) set out the matters that are within the remit of a Planning Committee.

2.3 For Strategic Planning Committee, these are:

1. To receive presentations in the pre-application or pre-determination stage.
2. To determine:
 - a. Applications for Planning Permission; or
 - b. Applications for Listed Building Consent; which, in the opinion of the [Head of Planning] acting in his or her discretion, raise strategic issues and should be determined by the Strategic Planning Committee.
3. Any other planning matter which, in the opinion of the [Head of Planning] acting in his or her discretion, raises strategic issues and should be referred to the Strategic Planning Committee.

2.4 For Planning Committee, these are:

1. To determine:
 - a. Applications for Planning Permission; or
 - b. Applications for Listed Building Consent; except where they are referable to the Strategic Planning Committee.
2. Any planning matter referred to the Planning Committee by the [Head of Planning] acting in his or her discretion.

2.5 Part 3.3 (Functions delegated to staff) lists all the planning powers that have been delegated by Council to specific officers and identifies the exceptions where they need to be determined by a Planning Committee in accordance with the Committee Consideration Criteria in these Procedure Rules. These exceptions relate to applications for Planning Permission or Listed Building Consent only. All other planning application types are delegated to officers.

COMMITTEE CONSIDERATION CRITERIA

2.6 The Committee Consideration Criteria in relation to planning matters are:

Planning Committee to approve Applications for Planning Permission or Applications for Listed Building Consent where at least one of the following applies:

- a) the application is within the categories which must be referred to the Mayor of London under the Town and Country Planning (Mayor of London) Order;
- b) the application does not accord with the provisions of the Development Plan and, in the opinion of the [Head of Planning] acting in his or her discretion, constitutes a significant departure;
- c) the application is by or on behalf of the Council and, in the opinion of the [Head of Planning] acting in his or her discretion, it is a significant development;
- d) Individual Representations have been received, in accordance with these Rules;
- e) a Petition Representation has been received, in accordance with these Rules; or
- f) a Representation from a Ward Councillor has been received, in accordance with these Rules.

2.7 Any application caught by these Criteria is referred in these Rules collectively as a Planning Committee Matter.

GENERAL

- 2.8 The Rules around Individual Representations, Petition Representations and Ward Councillor Representations (referred in these Rules collectively as Representations) comprise:
- **Timescales:** within which all Representations must be with the Planning Service
 - **General Requirements:** that all Representations must comply with
 - **Committee Referral Criteria:** that applies to the specific Representation categories
- 2.9 These will be applied in determining whether any Representation received in respect of a Planning Committee Matter would require it to be determined by a Planning Committee.
- 2.10 Any Representation that does not meet the Timescales, General Requirements and Committee Referral Criteria will therefore not be a factor in deciding whether the application will be considered by Committee. However, such Representations will still be considered by the case officer in finalising their report and recommendation, provided he/she receives the Representation before submitting their report for authorisation.
- 2.11 For probity reasons the Timescales, General Requirements and Committee Referral Criteria must be adhered to. The decision of the [Head of Planning] will be final in determining whether the Timescales, General Requirements or Committee Referral Criteria are met.
- 2.12 Nothing in these Rules interferes with the absolute right of the [Head of Planning] to refer a planning application or other matter to Committee as prescribed in the Constitution.

TIMESCALES

Statutory notification period

- 2.13 Applications may be publicised in a variety of different ways: letters to nearby neighbours, emails to Councillors and, in some cases, by the display of one or more site notices or an advertisement in the local paper. However, it does not matter how a person hears of a proposal, anyone is able to submit a Representation to the Planning Service.
- 2.14 The time limit for the public to make a Representation is specified on the Council's standard letter, notice or advert. The statutory period is usually 21 days.
- 2.15 Representations on applications must be made in writing (letter or email) to the Planning Service. They can also be made directly via the "View Planning Application Received" link and the "Enter Comment" button on a live application on the Council's website.
- 2.16 Representations on a planning application should not be sent to any email address other than the one on the notification email or advert (planning@haverling.gov.uk). This is important because other email addresses (eg, the case officer, team leader or service head) may not be monitored (eg, the officer may be on leave) and the email will therefore not be actioned.

- 2.17 Councillors must ensure that any Representations made directly to them must go through the Planning Service. It is important for probity reasons to ensure that all representations made on an application follow the same process.

Amended plans

- 2.18 Where the Council accepts amended plans on an application and it is considered necessary to republicise them, the Council will notify those people who have responded to the original publicity exercise and anyone considered to be affected by the amendment.
- 2.19 Amended plans are often negotiated in response to Representations. The Council may consider that an amendment it receives has overcome the Representations previously made, so it is therefore important that people consider whether they need to make a further Representation as follows:
- If the amendments do overcome their concerns, a person may write to confirm this, but the General Requirements (in particular paragraph 2.23 below) are designed to take account of such circumstances so people do not have to make a further Representation.
 - If someone has already made a Representation and the amendments do not overcome their concerns, they should make a further Representation to that effect.
 - If the amendment raises new concerns, such further Representations need to be made.

- 2.20 The time limit for responding to publicity of amendments will generally be at least 14 days.

Councillor timescales

- 2.21 All Councillors receive the weekly list of planning applications across the whole borough, listed by ward.
- 2.22 If a Councillor wishes to make or forward Representations on an application, they must respond by email to planning@haverling.gov.uk (not to another email address – see paragraph 2.16 above) within the timescale given on that email.

GENERAL REQUIREMENTS

- 2.23 A Representation is a letter, an email or a petition from any party (Councillor, local resident or business, stakeholder etc) that meets all the following requirements:
- It is in response to an application that has been publicised or advertised by the Council;
 - It is not anonymous and includes the person's name and postal address;
 - It is from, or on behalf of, a person who owns, lives at or operates from an address which is within the London Borough of Havering;
 - It is received by the Planning Service within the relevant Timescales set out above;
 - It raises objections that are material planning considerations and are related to the application; and

- Any material planning objection raised cannot be overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s).
- 2.24 Identical or similar pro-forma letters or emails, which also meet the above requirements, will be treated as forming a Petition (ie, each letter potentially being a single signature on a petition) rather than being treated as individual Representations for the purposes of deciding whether they will trigger consideration by Planning Committee.
- 2.25 We will only notify the person who sends in a petition or a bundle of pro-forma letters about the progress of an application. Where we receive a petition that is not sent in by an individual, we will write to the first person on the petition, if a clear address is included. Pro-forma letters that are received individually will not be notified about the progress of an application. A pro-forma letter is a letter or email that has been produced and distributed for people to just sign and send to the Council.
- 2.26 See below for the Criteria for Petitions.

COMMITTEE REFERRAL CRITERIA

Individual Representations

- 2.27 A Planning Committee Matter may be reported to Committee where Individual Representations have been received that all meet the General Requirements for a Representation and additionally meet the following Criteria:
- Any Individual Representation clearly states that they wish the application to be determined by a Committee; and
 - At least 12 such Representations have been received from individual properties within the London Borough of Havering for each application.
- 2.28 Representations for each application are those that are received from individual properties within the London Borough of Havering, ie not one from each member of a family, a household or a business within a property. If several objections are received from a single property, they will be treated as a single objection.
- 2.29 The Planning Committee Matter will only be reported to Committee under these Criteria where:
- the recommendation is for approval; and
 - the [Head of Planning] (in consultation with the Chairman) agrees to the item being placed on the Planning Committee agenda.
- 2.30 Otherwise the Planning Committee Matter will be determined under delegated powers.

Petition Representations

- 2.31 A Planning Committee Matter may be reported to Committee where one or more Petition Representations (including pro-forma letters – see paragraph 2.24 above) have been received that all meet the General Requirements for a Representation and additionally meet the following Criteria:
- Any Petition Representation clearly states that they wish the application to be determined by Committee; and

- All such Petitions must total at least 50 signatures with clearly readable names and addresses from persons who own, live at or operate from an address which is within the London Borough of Havering.
- 2.32 Where such petition(s) contain less than 50 such signatories they will individually (in the case of each petition) or collectively (in the case of pro-forma letters) be treated as each forming a single Individual Representation for the purposes of deciding whether a Planning Committee Matter will be reported to Committee.
- 2.33 The Planning Committee Matter will only be reported to Committee under these Criteria where:
- the recommendation is for approval; and
 - the [Head of Planning] (in consultation with the Chairman) agrees to the item being placed on the Planning Committee agenda.
- 2.34 Otherwise the Planning Committee Matter will be determined under delegated powers.

Ward Councillor Representations

- 2.35 A Planning Committee Matter may be reported to Committee where a Councillor for the ward within which the application site is situated or adjoins has made a Representation that meets the General Requirements for a Representation and additionally meets all the following Criteria:
- The application is within, partly within or adjoining the Councillor's ward;
 - It clearly states that the Councillor wishes the application to be determined by Committee;
 - It gives specific reasons for this that relate solely to matters that are material planning considerations and justify consideration by Planning Committee rather than under delegated powers – just saying that the Councillor considers that the matter should be determined by Planning Committee will not be sufficient;
 - It states whether the Councillor has been approached by any person concerning the application; and
 - If so, provides details of that contact, including the identity of the person(s).
- 2.36 A Councillor, who is not a Ward Councillor, may request that a Planning Committee Matter be reported to committee if they consider that there are exceptional circumstances that justify it. The decision as to whether such a matter is reported to committee is for the [Head of Planning], acting in his or her discretion, to make. Generally, only matters that are within the remit of Strategic Planning Committee will be accepted under this provision
- 2.37 The Planning Committee Matter will only be reported to Committee under these Criteria where:
- the recommendation is for approval; and
 - the [Head of Planning] (in consultation with the Chairman) agrees to the item being placed on the Planning Committee agenda.
- 2.38 Otherwise the Planning Committee Matter will be determined under delegated powers.

3 PUBLIC SPEAKING PROCEDURE

- 3.1 People can only address the committee on items that are on the Applications for Decision part of the agenda. Other items on an agenda (such as Development Presentations) do not attract public speaking rights, except at the discretion of the Chairman.
- 3.2 Ward Members can address the committee on Development Presentations. The procedures for this are set out towards the end of this section.

SPEAKING SLOTS

- 3.3 Subject always to the limitations below, for each planning application on the “Applications for Decision” part of the agenda there the following separate categories of speaking slot, in the following order, allocated to:
 - 1. An objector who has registered a speaking slot (a “Registered Objector”)
 - 2. The applicant or his/her agent/representative/supporter(s) in response to a Registered Objector (a “Responding Applicant”)
 - 3. Councillors – maximum of 3 slots (see next section for rules)
 - 4. Cabinet Member on Strategic Planning Committee only (see subsequent section for rules)

Allocation of speaking slots for Councillors

- 3.4 For Planning Committee, the Councillor slots are for Councillors where the application site is within, partly within or adjoining their ward only, as these applications generally raise local issues, and those Councillors have also clearly indicated that they wish the application to be referred to Committee for consideration in accordance with these rules (Referring Ward Councillors).
- 3.5 Non-Ward Councillors and non-Referring Ward Councillors do not have a right to address the committee.
- 3.6 For Strategic Planning Committee, the three Councillor slots are open to all Councillors, but priority will be in the following order:
 - 1. Referring Ward Councillors
 - 2. Referring other Councillors
 - 3. Non-Referring Ward Councillors
 - 4. Non-referring other Councillors
- 3.7 For both committees. if a Referring Ward Councillor wishes to speak but is unable to attend the Committee, they may nominate a substitute Councillor to address the Committee on their behalf.
- 3.8 In all cases, Councillors should avoid duplication and coordinate their attendance at committee in the interest of efficiency.

Allocation of speaking slot for a Cabinet Member

- 3.9 A Cabinet Member can address Strategic Planning Committee on strategic cases where significant issues for their portfolio area arise. However, where the council is the applicant and the promoting Cabinet Member wishes to address committee, this should be done in the applicant’s slot and not this slot.

Length of Speaking Slots

- 3.10 Each speaking slot for items on Strategic Planning Committee is a maximum of five minutes each. Each speaking slot for items on Planning Committee is a maximum of three minutes each.
- 3.11 If the Chairman, using his discretion, changes the time allocated to any speaker slot, all speaker slots will be offered the same length of time to speak.

COMMITTEE NOTIFICATIONS

- 3.12 Where a planning application is reported on the “Applications for Decision” part of the agenda, all the individuals and organisations (including Councillors) that made a Representation on the application will be notified (by letter or email) that the application will be considered by Committee.
- 3.13 The Council will only notify the person who sends in a petition or a bundle of pro-forma letters. Where we receive a petition that is not sent in by an individual, we will write to the first person on the petition, if a clear address is included. Pro-forma letters that are received individually will not be notified.
- 3.14 The applicant (or his/her agent) will be sent a similar notification.
- 3.15 The notification will explain the procedures regarding public speaking. Requests to address Committee will not be accepted prior to the publication of the agenda and these notifications.

REGISTERING A SPEAKING SLOT

- 3.16 Any objector who wishes to address Committee must notify the Council by the date specified in the notification to register a speaking slot. Email or telephone should be used for this purpose. This communication should provide the name and contact details (email address and/or phone number) of the intended speaker so that any changes to the arrangements can be communicated.
- 3.17 The Registered Objector speaking slot is allocated on a strictly first come basis. Any further objectors registering to speak will be told that the slot has been taken.
- 3.18 If there is a Registered Objector on an item, the applicant will be contacted by the Council and given the opportunity to register to speak in response to the Registered Objector.
- 3.19 If there are supporters wishing to address the committee, they must liaise with the applicant. However, the slot is for the applicant to decide how to use.
- 3.20 If a public speaker needs special arrangements this must be brought to our attention when registering a speaking slot so that arrangements can be made in good time. Havering Town Hall has facilities for wheelchair users, including level access and toilets. The Chamber is fitted with a hearing loop.

REGISTERING ATTENDANCE

- 3.21 On the night of the Committee meeting:
- Registered Objectors and Responding Applicants who have a registered speaking slot; and

- An eligible Councillor (or his/her nominated substitute – see paragraphs 3.4 to 3.9 above).

must register their attendance with the Committee Clerk at the meeting at least 15 minutes before the meeting starts.

Limitations

3.22 Where an item is on the agenda only because of the level of Representations received and:

- no Registered Objector, Responding Applicant or Referring Councillor has registered a speaking slot; or
- a Registered Objector, Responding Applicant or Referring Councillor has registered a speaking slot but nobody has registered their attendance at the Town Hall in accordance with paragraph 3.21 above;

the item will be removed from the agenda and reverted to the [Head of Planning] to determine under delegated powers and will not be considered by the committee. In such circumstances, a Responding Applicant would lose their right to address the Committee.

SPEAKING

3.23 All those involved in public speaking are restricted to an oral presentation only. The officers' presentation is therefore not available for use by public speakers.

3.24 Following the completion of a speaker's address to the Committee, that speaker shall take no further part in the proceedings of the meeting, unless permitted to do so by the Chairman of the Committee.

3.25 The distribution of additional material or information to Planning Committee Councillors is not permitted at the meeting. If a speaker, or any other member of the public, wishes to bring material to the Committee's attention they need to either supply it to the Planning Service, if it is written material, by noon on the day of the Committee, to include in the Update Report (see paragraphs 5.7 to 5.11 below for procedures, limitations and deadlines) or otherwise send it direct to Councillors in advance of the meeting. Councillors contact details are available from the Council's website.

ADDITIONAL CONSIDERATIONS FOR COUNCILLORS

3.26 When a Councillor addresses the Committee in accordance with these Procedures (either as a Referring Councillor or as a Registered Objector) they must:

- declare, before making their speech, details of any material contact with the applicant, agent, adviser, neighbour, objector or other interested party and whether the speech is made on behalf of such person(s) or any other interest;
- sit separately from Planning Committee Councillors, to demonstrate clearly that he/she is not taking part in the discussion, consideration or vote; and
- not communicate in any way with Planning Committee Councillors or pass papers or documents to them during the meeting.

- 3.27 A Planning Committee Councillor may address the Committee in accordance with these Rules but, where they do so, they cannot take part in the debate or vote on the application they have made Representations on. They may address the Committee in accordance with these procedures provided they do not have a Disclosable Pecuniary Interest in the matter.
- 3.28 Where the Councillor has a Disclosable Pecuniary Interest, the Councillor may only address the Committee on any matter in which they have such an interest if they have been granted a dispensation by the Monitoring Officer for this purpose.

DEVELOPMENT PRESENTATIONS

- 3.29 The Responsibility for Functions (part 3 of the Constitution) enables Strategic Planning Committee to receive presentations in the pre-application or pre-determination stage.
- 3.30 Ward Councillors can address the Committee when it is considering Development Presentations. There are three speaking slots a maximum of five minutes each. Ward Councillors will be notified that the development will be presented to Committee. On the night of the Committee meeting a Ward Councillor (or his/her nominated substitute) must register their attendance with the Committee Clerk in attendance at the meeting at least 15 minutes before the meeting starts.
- 3.31 If more than one Ward Councillor indicates that they wish to speak, Councillors should avoid duplication and coordinate their attendance at committee in the interest of efficiency.
- 3.32 Like all public speaking slots, Ward Councillors are restricted to an oral presentation only and the presentation is therefore not available for their use. The additional considerations for Councillors, set out above, also apply to these speaking slots.
- 3.33 Ward Councillors who elect to address the Planning Committee at a Development Presentation should remember that the purpose of these presentations is for participants (including Councillors) to be constructive and to try to improve schemes so that they can be approved if they are finally submitted as formal planning applications. Any presentation should be confined to commenting on aspects of the development (eg its design, highway impacts, level of affordable housing etc) and not objecting to the principle of the development or the scheme as a whole. If you are unable to do this then you should not register to speak at this stage. The time to address the Planning Committee on your objection will be when any subsequent planning application is reported on the applications for decision part of the agenda.
- 3.34 If you do not follow the advice in the previous paragraph, the Chairman may stop you from speaking.

CHAIRMAN'S DISCRETION

- 3.35 At the discretion of the Chairman, such as in the interests of natural justice or in exceptional circumstances, the public speaking procedures may be varied. The reasons for any such variation shall be recorded in the minutes. The number of objectors or supporters should not, of itself, be a factor.

4 PRE-COMMITTEE MATTERS

- 4.1 The work of Planning Committee mainly comprises the determination of planning applications. Delays in determining applications will jeopardise the Council's ability to meet national performance targets and impact adversely on the interests of residents and affected applicants.
- 4.2 The Council is expected to decide all applications within statutory timescales. Applications that are to be considered by Committee are included on the agenda of the first available Committee after completion of the officer's report so that a decision can be taken in the shortest possible time. For this reason, Councillors should avoid requests for officers to speed up or delay the determination or assessment of an application for their own personal or political convenience or following lobbying by applicants, agents/advisers, residents or other interested parties.

PRE-COMMITTEE BRIEFING

- 4.3 A further potential cause of delay is the deferral by committee of agenda items for Councillors to undertake site visits or receive further information. To minimise this risk Planning Committee Councillors who consider that they need further information (including a site visit) or who have queries on an application should contact the [Head of Planning] as soon as possible before the meeting at which it will be considered.

SITE VISITS

- 4.4 It is advisable that Planning Committee Councillors are familiar with the sites of the applications on the agenda to enable them to make informed decisions on the planning applications before them and to avoid deferring or adjourning those decisions pending site visits.
- 4.5 The presumption will be that planning Committee Councillors will be sufficiently familiar with the agenda sites and their locations before the meeting. Councillors may already be familiar with them from their local knowledge or will visit one or more of them in advance of the meeting. Advice on site visits by individual Planning Committee Councillors is given below.
- 4.6 In addition, photographs of sites will be presented by officers at committee.

By Planning Committee Councillors

- 4.7 Where a Planning Committee Councillor visits the site before the meeting, care must be taken to ensure that they comply with the Planning Code of Good Practice in the Constitution. Such visits should be carried out discreetly and the Councillor should avoid making themselves known to the applicant or to neighbours. Accordingly, he/she should not go onto private land, such as the application site or a neighbouring property. The reason for this is that contact between a Planning Committee Councillor and the applicant or a local resident could be misinterpreted as lobbying and may create a suspicion of bias. Where such contact is made, this should be declared in Committee, but it should not prevent that Councillor from taking part in the consideration of that application, if he/she has followed the advice in the Planning Code of Good Practice and acts in accordance with the Members' Code of Conduct.

By the Planning Committee

- 4.8 Where the Chairman of the Committee considers that a whole committee site visit is necessary because a proposal appears to be particularly complex or it is difficult to visualise from the plans, wherever possible this should be made in advance of the Committee meeting.
- 4.9 If a request for a site visit emerges during the meeting of the committee, this request will be decided by a majority vote and the reasons for it recorded in the minutes.
- 4.10 The procedure for site visits by Committee shall be as follows:
- Only the Planning Committee Councillors and officers can attend a site visit.
 - Arrangements for visits will not normally be publicised or made known to applicants, agents or third parties, such as objectors.
 - Where permission is needed to go onto land, contact will be made with the owner by officers. The owner cannot take any part in the visit, other than to effect access onto the site.
 - The purpose of a site visit is to enable Planning Committee Councillors to view the site and to better understand the impact of the development. The Committee should not receive representations or debate issues during a site visit. They can ask the Planning Officer present questions of clarification.
 - The Planning Officer will make a note of the site visit and it will be placed on the planning file.
 - Where new information emerges from a site visit that needs to be brought to the attention of the Committee, this will be included in the Update Report.
 - Failure to attend a formal site visit shall not bar a Planning Committee Councillor from voting on an item at the Committee meeting that considers it, provided the Planning Committee Councillor is satisfied that he/she is sufficiently familiar with the site and its location.

5 COMMITTEE AGENDA

- 5.1 The Committee's agenda may contain the following sections for planning reports:
- **Development presentations:** to enable the Committee to receive presentations on proposed developments, including when they are at the pre-application stage. These items do not attract public speaking rights, other than Ward Councillors.
 - **Applications for decision:** these items attract public speaking rights as detailed above.
 - **Other planning matters:** non-application matters that require Committee consideration. These items do not attract public speaking rights.
 - **Items for information:** reports that are for information only. These items do not attract public speaking rights.

REPORTS

- 5.2 Each planning application for decision is the subject of a written report with an officer recommendation. Reports will be produced in a standard form provided by the [Head of Planning], and will identify and analyse the material considerations, of which the Committee need to take account when considering the application on its planning merits.
- 5.3 In addition to the written report, illustrative material will usually be presented at the meeting to explain the scheme. The planning files will also be available (via the document management system) at the meeting for inspection by Planning Committee Councillors.

RECOMMENDATIONS AND DELEGATIONS

- 5.4 The recommendations in the reports to Committee do not set out the full wording of planning conditions, reasons for refusal, informatives and planning obligations, but are a summary of them. There are two reasons for this:
1. It communicates the details of the recommended decision more clearly to Planning Committee Councillors than many pages of detailed conditions or grounds; and
 2. There can sometimes be a delay before a decision is issued (such as waiting for the signing of a legal agreement or views from the Mayor of London and/or the National Planning Case Unit) and something may arise which necessitates an amendment, a deletion or an addition.
- 5.5 It is hereby delegated to the [Head of Planning] to communicate the detailed wording of Committee decisions to applicants.
- 5.6 The Functions Delegated to Staff states that where the Committee determines an item on an agenda and either the committee makes changes to the recommendation or it is necessary for officers to subsequently make changes (such as to delete, vary or add conditions, informatives, planning obligations or reasons for the decision or to accept changes to the development), the making of these changes, provided that they are within the substantive nature of the committee decision, is delegated to the [Head of Planning].

UPDATE REPORT

- 5.7 It is common for material (such as late representations) to be received by the Planning Service after the close of the agenda. Such material will be considered and placed on the public planning file along with all the other papers for the application, subject only to any public exclusion restrictions.
- 5.8 Where this material needs to be brought to the attention of the Committee, so that it can be considered, it will be presented in the Update Report. It will comprise a summary of what has been raised, in the same way as representations are summarised in the main Committee report.
- 5.9 The Planning Service will email the Update Report to Planning Committee Councillors and publish it on the Council's website as soon as it is ready, but before the Committee commences.
- 5.10 The practicality of producing such a report means there must be a cut-off point for the receipt of late material by the Planning Service. This is noon on the day of the meeting. Generally, material received after this time will not be

reported to the Committee. The [Head of Planning] has an absolute discretion in this regard.

- 5.11 Material must not be distributed to Planning Committee Councillors by members of the public (including public speakers) or other Councillors during the meeting. The distribution of such material should be done in advance of the meeting as explained in paragraph 3.25 above.

6 ORDER OF PROCEEDINGS

- 6.1 Except as otherwise stated on the agenda, generally meetings take place at Havering Town Hall. The time the meeting is expected to begin will be stated on the agenda papers.
- 6.2 At the discretion of the Chairman, the agenda may be re-ordered at the meeting.

DEVELOPMENT PRESENTATIONS

- 6.3 The procedure for considering each item shall be as follows:
- The [Head of Planning], or his/her representative, will introduce the main issues;
 - The developer will present their scheme for no longer than 15 minutes unless the Chairman, exercising his/her discretion, has allowed a longer period;
 - A Ward Councillor, if registered to speak in accordance with Rule 3 (Public Speaking Procedure), can address the committee for no longer than 5 minutes unless the Chairman, exercising his/her discretion, has allowed a longer period;
 - Through the Chairman, Planning Committee Councillors may ask questions; and
 - The [Head of Planning], or his/her representative, will summarise the issues raised by the Committee which will form the minute for the item.

APPLICATIONS FOR DECISION

- 6.4 The procedure for considering applications where there are public speakers shall be as follows:
- The [Head of Planning], or his/her representative, will introduce the development the subject of the application;
 - Public speaking in accordance with Rule 3 (Public Speaking Procedure) will take place;
 - The [Head of Planning], or his/her representative, will present the material planning considerations and address, where necessary, any issues raised during public speaking; and
 - The Committee will consider the item and reach a decision.
- 6.5 The procedure for considering applications where there are no public speakers shall be as follows:
- If requested by the Chairman, the [Head of Planning], or his/her representative, will present the main issues; and
 - The Committee will consider the item and reach a decision.

OTHER PLANNING MATTERS

- 6.6 The procedure for considering any item shall be as follows:
- If requested by the Chairman, the [Head of Planning], or his/her representative, will present the main issues;
 - Through the Chairman, Planning Committee Councillors may ask questions of clarification; and
 - The Committee will consider the item and, if required, reach a decision.

OTHER PROCEDURAL ISSUES

Attendance

- 6.7 Where a decision is made on an agenda item, to be able to vote a Planning Committee Councillor must be present throughout the whole of the Committee's consideration of that item, including the officer introduction and any public speaking. Any dispute as to whether the Planning Committee Councillor in question should be permitted to vote shall be decided by the Chairman, in consultation with legal and other officers as necessary.
- 6.8 This does not apply to Development Presentations because no decisions are being made as they are part of an informal pre-application process, rather than the formal planning application decision making process.

Duration of meetings

- 6.9 Planning Committee meetings are subject to a guillotine that they should finish within 2½ hours of the time that the meeting was due to start (as listed on the agenda papers). An item started before the guillotine can continue to be considered for a further 30 minutes to enable it to be determined.
- 6.10 Where a report has been placed on a Planning Committee agenda but the meeting either fails to start to consider that item prior to the guillotine, or starts consideration before the guillotine but fails to complete determination of it within the additional 30 minutes, further consideration of the matter will be suspended and it will be delegated to officers to determine in accordance with the recommendation set out in the report.
- 6.11 The meeting can only suspend these provisions if it does so by way of a resolution made prior to the guillotine and agreed on a majority vote. Generally, the committee would only suspend the guillotine for undetermined items with speakers.

Minutes

- 6.12 The minutes of the meeting will record:
- The Councillors and officers present at the meeting;
 - Any disclosures of interest made by Councillors or officers;
 - For each item, the identity of any public speakers and the decision;
 - Where a decision goes against the recommendation, the reason(s) for doing so;
 - Where a decision is deferred, the reason(s) for doing so;
 - Any decision to suspend the guillotine, and the reason(s) for doing so;
 - The use of the Chairman's discretion to depart from these Procedure Rules, and the reason(s) for doing so; and

- The time the meeting finished.

7 DECISION MAKING

7.1 In coming to a decision on a planning application, a Planning Committee Councillor must:

- Come to meetings with an open mind.
- Comply with these Rules.
- Not allow anyone (except officers, other Planning Committee Councillors and public speakers when they are addressing the Committee) to communicate with you (orally, electronically, in writing or by any other means) during the Committee's proceedings as this may give the appearance of bias. For the same reason, it is good practice to avoid such contact in the period before the meeting starts and when it ends.
- Consider the advice that planning, legal or other officers give the Committee in respect of the recommendation, any proposed amendment to it or on any other matter.
- Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and always make decisions in accordance with the development plan unless there are good and demonstrable planning reasons to come to a different decision.
- Come to a decision only after due consideration of all the information reasonably required to base a decision upon. This will include the local information that Planning Committee Councillors are uniquely placed to access, but always remembering to take decisions on planning grounds alone.
- Raise any queries you may have on an application with the [Head of Planning] prior to the meeting.
- If you feel that there is insufficient time to digest new information or that there is insufficient information before you, seek an adjournment to allow these concerns to be addressed.
- Not vote on a proposal unless you have been present to hear the entire debate, including the officers' introduction and any public speaking. The Chairman should be prepared to consider adjourning briefly to allow any necessary comfort breaks during meetings.
- Make sure that if you are proposing, seconding or supporting a decision contrary to the officer's recommendation or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion and that you consider any advice planning, legal or other advice officers give you. Your reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

8 VOTING PROCEDURES

- 8.1 The Chairman will bring the Committee to a vote when he/she considers that there has been sufficient debate of an item.
- 8.2 The Committee will vote on the recommendation set out in the report, unless a motion is made and seconded to defer or adjourn consideration of an item (for example for a site visit or further information/advice).

- 8.3 If a Planning Committee Member wishes to amend the recommendation (such as an additional condition or a variation to a condition) they will need to move this and have it seconded prior to any vote on the recommendation.
- 8.4 The committee must consider carefully any advice officers give on the proposed amendment, including legal advice. If the [Head of Planning] (or his/her representative) and the legal representative consider that they are unable to give that advice immediately, further consideration of the matter will be suspended and the agenda item will be adjourned so that the [Head of Planning] can bring a report to the next available committee setting out his/her advice. If legal advice is required, this may need to be on the private business part of the agenda. In such cases, it will be important that the Chairman communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future committee meeting.
- 8.5 For the vote on the recommendation (or an amendment to the recommendation) to be successful there needs to be a majority vote in favour of it. In the event of an equality of votes, the Chairman has an additional casting vote. This can be exercised irrespective of whether the Chairman voted.

DECISIONS CONTRARY TO THE RECOMMENDATION

- 8.6 A motion to go against the recommendation must always be considered after a vote on the recommendation (or an amendment to the recommendation) has taken place, so that officers are clear that the committee may be minded to go against the recommendation and can prepare their advice accordingly.
- 8.7 When the recommendation is not supported, a new motion to either grant or refuse the application must be moved and seconded. However, before a new motion is proposed, the Committee must first receive advice from the [Head of Planning], or his/her representative, as to what form a new motion could take. That advice will be based upon the material planning considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge.
- 8.8 The solicitor advising the Committee may be called upon as necessary to give advice on legal matters, but cannot advise the committee on planning matters.
- 8.9 Once the Committee has received the advice of the [Head of Planning], or his/her representative, they can proceed to a vote. A detailed minute of the Committee's reasons to go against the officer's recommendation, which as a matter of law (Dover District Council v CPRE Kent [2017] in the UK Supreme Court) must be clear and convincing, shall be made and a copy placed on the application file.
- 8.10 If the [Head of Planning] (or his/her representative) and the legal representative consider that they are unable to give that advice immediately, the procedure outlined in paragraph 8.4 above must be followed. In such cases, it will be important that the Chairman communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future meeting of the Committee.

DECISIONS CONTRARY TO THE DEVELOPMENT PLAN

- 8.11 The law requires that where the Development Plan is relevant, decisions must be taken in accordance with it unless there are good planning reasons to do otherwise. If a Committee intends to approve an application which does not accord with the provisions of the Development Plan, the material considerations must be clearly identified and the justification for overriding the Development Plan clearly demonstrated. The application must be advertised in accordance with Article 15 of the Town and Country Planning (Development Management Procedure) Order 2015 and, depending upon the type of development proposed, may also have to be referred to the Secretary of State for Communities and Local Government (National Planning Case Unit).
- 8.12 If the recommendation in the officer report would not accord with the provisions of the Development Plan, the justification will be included in that report and the necessary advertisement would have been undertaken.
- 8.13 If the Committee is minded to make a decision which would be contrary to the officer recommendation (whether for approval or refusal) and that decision would not accord with the provisions of the Development Plan, such a motion may only contain the Committee's initial view and must be subject to a further report detailing the planning issues raised by such a decision. Further consideration of the matter will be suspended to a future meeting of the Committee when officers will present a report setting out the proposed new position and explaining the implications of the decision. If legal advice is required, this may need to be on the private business part of the agenda. Any necessary advertisement of the application will also be undertaken. In such cases, it will be important that the Chairman communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future meeting of the Committee.
- 8.14 If, having considered the report, the Committee decides to determine the application contrary to the provisions of the Development Plan, a detailed minute of the Committee's reasons, which as a matter of law (*Dover District Council v CPRE Kent* [2017] in the UK Supreme Court) must be clear and convincing, shall be made and a copy placed on the application file.

9 COMMITTEE PERFORMANCE

- 9.1 Planning Committee carries out the Council's statutory planning application determination function and, like all local planning authorities, are expected to do so properly and lawfully. Decisions "must be made in accordance with the [development] plan unless material considerations indicate otherwise" (s38(6) of the Planning and Compulsory Purchase Act 2004). Government have a range of planning performance monitoring regimes and have taken powers from Parliament to take action where performance is under specified levels. Both speed and quality of decisions are measured.
- 9.2 It is therefore important that the performance of Planning Committee is monitored like other parts of the planning service. The following indicators will be used to monitor performance:
- The percentage of officer recommendations that are overturned

- The percentage of agenda items that are deferred
- 9.3 Such performance management reports shall be reported at least annually, to Planning Committee in the first instance and then to Council.
- 9.4 Where an application is determined against the recommendation and it goes to appeal, particular consideration will be given to those cases where:
- The appeal was allowed;
 - The appeal was dismissed, but not all grounds were supported; or
 - Costs were awarded against the Council.
- 9.5 Such matters shall be considered as they arise and reported to Planning Committee in the first instance and then to Council. A summary of these matters shall be included in the annual performance management report.

APPENDIX G

PLANNING CODE OF GOOD PRACTICE

The following to be inserted into Part 5 Codes and Protocols of the Constitution:

Contents

1. Introduction
2. Aim of the Code
3. Role and conduct of Councillors and officers
4. Interests: Registration and Disclosure
5. Bias: predisposition/predetermination
6. Applications submitted by the Council, Councillors or officers
7. Lobbying of and by Councillors
8. Pre-application discussions
9. Post-submission discussions
10. Planning appeals
11. Planning enforcement
12. Councillor training

1 INTRODUCTION

- 1.1 This Code has been prepared using advice in the Local Government Association's revised guidance note on good planning practice for Councillors and officers dealing with planning matters – Probity in Planning for Councillors and Officers (November 2013).

KEY PURPOSE OF PLANNING

- 1.2 Planning has a positive and proactive role to play at the heart of local government. It helps Councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.
- 1.3 The planning system works best when Councillors and officers involved in planning understand their roles and responsibilities and the context and constraints in which they operate.
- 1.4 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework. In doing this, decision-makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

2 AIM OF THE CODE

- 2.1 In today's place-shaping context, early Councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the places that communities need. This guidance is intended to reinforce Councillors' community engagement role whilst maintaining good standards of probity that minimizes the risk of legal challenge.
- 2.2 Planning decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and

decision notices. Nevertheless, it is important that the decision-making process is open and transparent.

- 2.3 One of the key aims of the planning system is to balance private interests in the development of land against the wider 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. Opposing views are often strongly held by those involved. Whilst Councillors must take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that the Council makes planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.
- 2.4 The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

WHEN THE CODE APPLIES

- 2.5 This code applies to Councillors when they are involved in the planning process. This includes, where applicable, when part of decision making meetings of the Council, in exercising the functions of the planning authority or when involved on less formal occasions, such as meetings with officers or consultative meetings. It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications. If you have any doubts about the application of this Code to your own circumstances you should seek advice early from the Monitoring Officer, and preferably well before any meeting takes place.
- 2.6 This Code applies to all meetings of the Council's Planning Committees in relation to the determination of planning applications and any other business dealt with at these committees. When the term "Councillor" is used, it means that the text is applicable to all Members of the Council. The term "Planning Committee Councillor" means a Member or a substitute Member of the Council's Strategic Planning Committee or Planning Committee.

RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.7 Councillors are reminded that this Code is designed primarily for Planning Committee Councillors and Councillors who, for whatever reason, find themselves involved in the planning process. It should not be read in isolation. Whilst this Code interprets the Members' Code of Conduct with respect to planning matters, it is subordinate to the Members' Code of Conduct and, in the event of any inconsistencies arising between this Code and the Members' Code of Conduct, the latter shall prevail.

3 ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

GENERAL ROLES OF COUNCILLORS AND OFFICERS

- 3.1 Councillors and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole, whilst Councillors are responsible to the electorate.

- 3.2 Officers are not appointed to serve any political group and therefore advise all Councillors. Officers carry out the daily functions of the Council's business in accordance with Council or Committee decisions or under powers delegated to them pursuant to the Constitution. Officers are governed by the Officers Code of Conduct contained in the Constitution. In addition, planning officers, who are Members of the Royal Town Planning Institute (RTPI), are subject to a professional code of conduct and breaches may be subject to disciplinary action by the RTPI. Similarly, officers who are solicitors are subject to regulation by The Solicitors Regulation Authority. Officers in other professions will have corresponding codes.
- 3.3 The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by Councillors and to adopt a code of conduct. The Members Code of Conduct in the Constitution is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to Council business, including the need to register and disclose interests, as well as appropriate relationships with other Councillors, staff and the public. The Council's constitution set down rules and orders which govern the conduct of Council business.

RELATIONSHIP BETWEEN COUNCILLORS AND OFFICERS

- 3.4 Mutual trust, respect and understanding between Councillors and officers are the keys to achieving effective local government. A successful relationship can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust that underpins it, must never be abused or compromised.
- 3.5 Planning officers' views, opinions and recommendations will be presented based on their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Councillors.
- 3.6 Councillors must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views must be received in written form and be placed on the planning file, so that they can be considered together with other material planning considerations.

4 INTERESTS: REGISTRATION AND DISCLOSURE

- 4.1 A Councillor should refer to the Members' Code of Conduct for assistance in identifying Disclosable Pecuniary Interests or any Other Interests or seek advice from the Monitoring Officer prior to attending a meeting. A failure to properly register a Disclosable Pecuniary Interest or to participate in discussion or voting in a meeting on a matter in which a Councillor has a Disclosable Pecuniary Interest, are criminal offences. Ultimately, responsibility for fulfilling the requirements rests with each Councillor.
- 4.2 The provisions of the 2011 Act seek to separate interests arising from the personal and private interests of the Councillor from those arising from the Councillor's wider public life. Councillors should think about how a reasonable

Member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate.

REGISTRATION OF INTERESTS

- 4.3 A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

DISCLOSURE OF INTERESTS

- 4.4 It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a matter to be discussed at a Planning Committee, he or she should raise this with the Monitoring Officer as soon as possible.

Personal and Pecuniary Interests

- 4.5 The Council's Members' Code includes provision for declaration of interests that are wider than Disclosable Pecuniary Interests under the Localism Act 2011. Some personal interests may amount to pecuniary interests that impact on members' ability to participate and vote on that item.

Disclosable Pecuniary Interests

- 4.6 Where a Councillor has a Disclosable Pecuniary Interest relating to an item under discussion, the Councillor may not participate (or participate further) in any discussion of the matter at the meeting or participate in any vote (or further vote) on the matter. The Councillor should also withdraw from the Chamber. This means that a Councillor with a Disclosable Pecuniary Interest is precluded from making representations orally to the committee or from making representations on behalf of a party to the hearing.
- 4.7 A Councillor with a Disclosable Pecuniary Interest can still present their views to the committee through other means. For example, the Councillor can:
- make written representations in their private capacity in accordance with the Committee Consideration Criteria as set out in the Planning Committee Procedure Rules – the existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations – such written representations should be addressed to officers rather than to other Councillors;
 - use a professional representative to make a representation on the Councillor's behalf in circumstances where the Councillor's planning application is under consideration; or
 - arrange for another Councillor (eg, a fellow ward Councillor) to represent the views of the Councillor's constituents on matters in which the Councillor has a Disclosable Pecuniary Interest.
- 4.8 Although a Disclosable Pecuniary Interest relating to an item under discussion requires the withdrawal of the Councillor from the committee, in certain circumstances, a dispensation can be sought from the Monitoring Officer to be present for that item of business.

- 4.9 Members should also have regard to the requirements regarding personal and pecuniary interests under the Code since these may also require a declaration of interest and may impact on members' ability to participate in an item.

5 BIAS: PREDETERMINATION/PREDISPOSITION

- 5.1 In addition to being aware and taking appropriate action in relation to interests, Planning Committee Councillors need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application, on planning policies or on other planning matters, such as enforcement. Avoidance of bias or predetermination or the appearance of bias or predetermination is a principle of natural justice that the decision maker is expected to adhere to.
- 5.2 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a "closed mind" and likely to leave the committee's decision susceptible to challenge by Judicial Review. The latter is the perfectly normal process of someone making up their mind.
- 5.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear that, although they have an initial view, they are willing to listen to all the material considerations presented at the committee and keep an open mind before deciding on how to exercise their vote (predisposition). The latter is acceptable; the former is not and may result in a Court quashing such a planning decision.
- 5.4 Section 25 of the 2011 Act provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This enacted the common-law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and potentially changing their mind in the light of information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 5.5 For example, a Councillor who states, "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a Councillor who states, "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area". The former has a closed mind and is predetermined, whereas the latter is predisposed but is maintaining an open mind.
- 5.6 This distinction is particularly important in the context of the Council's practice of facilitating presentations to Strategic Planning Committee by developers of schemes at the pre-application stage. After these presentations, Planning Committee Councillors question details of the development so that they can input into the design development of these strategic developments. They will therefore express views on aspects of the development (such as its external appearance, impact on neighbours or transport network implications) which

will display predisposition around these elements. What a Planning Committee Councillor should not do at this pre-application stage is to express a firm view on the development as a whole, as this could amount to predetermination. Such a view should only be formed at the end of the process, when all the material considerations are available to the Planning Committee Councillors to consider and weigh up before finalising their view.

DEALING WITH LOBBYING

- 5.7 A Planning Committee Councillor who has been lobbied and wishes to support their constituents or is a Ward Councillor and wishes to campaign for or against a proposal, will need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the planning application. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that application. A Planning Committee Councillor could speak at a Planning Committee (in accordance with the Council's public speaking procedures) on behalf of their constituents, having declared their pre-determined position but could not take part in the planning decision.
- 5.8 Participation as a Planning Committee Councillor where a Councillor is or may be perceived to be biased, in addition to the risk of a complaint against the individual Councillor, also places the decision of the Committee at risk from legal challenge. As such, if a Planning Committee Councillor considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the matter.

6 APPLICATIONS SUBMITTED BY THE COUNCIL, COUNCILLORS OR OFFICERS

APPLICATIONS SUBMITTED BY THE COUNCIL

- 6.1 Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for a Council's own development will be treated no differently from any other application.
- 6.2 Certain Councillors may, through their other roles outside of a Planning Committee (eg a Cabinet Member), have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at Planning Committee, the Councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action, if that is the case, is that the Councillor concerned may address the Committee in the applicant's speaking slot (see the Planning Committee Procedure Rules) but does not take part in its consideration and determination. It is important that the Councillor should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

APPLICATIONS SUBMITTED BY COUNCILLORS OR OFFICERS

- 6.3 It is perfectly legitimate for planning applications to be submitted by Councillors and members of staff. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
- 6.4 If a Councillor or an officer submits their own proposal to the Council which they serve, they should take no part in its processing. A Councillor who acts as an agent or representative for someone pursuing a planning matter with the authority should also take no part in its processing.
- 6.5 The 1APP planning application form requires an applicant to indicate whether they are a member of staff or a Councillor or a partner/spouse of a member of staff or a Councillor. Decisions relating to applications where members of staff or Councillors are the applicant should be reported to Committee where they relate to the following:
- Councillors
 - Senior officers of the Council (Service Head and above)
 - Officers of the Local Planning Authority.
- 6.6 The term “Officers of the Local Planning Authority” means officers within the Council who, in the opinion of the [Head of Planning], are closely involved in the day-to-day work of the Council’s planning function.
- 6.7 The procedures to be followed in Committee in such circumstances are as follows:
- The consideration in Committee of an application from a Councillor may be considered a Disclosable Pecuniary Interest for that Councillor and he/she will need to be mindful of their obligations in relation to Disclosable Pecuniary Interests as set out in the Members’ Code of Conduct.
 - If such a Councillor does not have a Disclosable Pecuniary Interest, they may address the Committee as the applicant in accordance with the Council’s public speaking procedures. If, however, such a Councillor has a Disclosable Pecuniary Interest they may not participate in the consideration of the matter and may therefore not speak on the matter. They would need to have a representative speak on their behalf.
 - The Planning Committee Councillors must consider whether the nature of any relationship means that they have a Disclosable Pecuniary Interest in relation to the matter and if so, they may not participate in the consideration of that matter.
- 6.8 The principle in the final bullet point also applies to an application submitted by a member of staff when it is considered in Committee.

7 LOBBYING OF AND BY COUNCILLORS

- 7.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Councillor or to a Planning Committee Councillor.

- 7.2 As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the Councillors themselves".
- 7.3 Lobbying, however, can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense are exercised by all the parties involved.

LOBBYING OF COUNCILLORS

- 7.4 A Planning Committee Councillor should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the Committee's decision making if they are asked to express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing. Planning Committee Councillors should ensure that it is made clear to any lobbyists that they will only be able to reach a final decision on any planning matter after they have heard all the relevant arguments and looked at the relevant information during the sitting of the determining Committee.
- 7.5 Planning Committee Councillors should therefore:
- suggest to lobbyists that they write to the Planning Service in order that their views can be included in the officer report prepared for determination under delegated powers or by Committee;
 - pass on any lobbying correspondence received (including plans, data, correspondence etc in respect of an application) to the Planning Service (planning@haverling.gov.uk) as soon as practicably possible so that it can be considered and included in the report on the application;
 - refer the matter to another ward member;
 - remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to make decisions impartially and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
 - not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is unavoidable (eg, refreshments at a meeting), ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and
 - inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up where necessary.
- 7.6 Planning Committee Councillors should note that, subject to the requirements to ensure that they comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable Pecuniary Interests, they are not precluded from:
- listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to predetermination and they make clear they are keeping an open mind;

- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Councillor, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.

- 7.7 In the interest of openness, Planning Committee Councillors should declare any lobbying to which they have been subject.
- 7.8 It is very difficult to convey every nuance of these situations and to get the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual Councillor.

LOBBYING BY COUNCILLORS

- 7.9 Planning Committee Councillors should not become a Member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Councillor does, he/she may appear to be biased. Whilst they may be able to address the Committee as a Ward Councillor or an objector, they are not able to participate or vote on any matter in respect of which they have such an interest, unless they have received a dispensation for this purpose from the Monitoring Officer.
- 7.10 Planning Committee Councillors can join general groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest and consider whether that also amounts to a pecuniary interest where that organisation has made representations on a particular proposal. Where a Planning Committee Councillor is able to participate they should make it clear to that organisation and the Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.
- 7.11 Councillors should not excessively lobby Planning Committee Councillors regarding their concerns or views on a planning application, nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 7.12 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, is likely to compromise, or could be seen as compromising the officers' impartiality or professional integrity. Nor should they request officers to speed up or delay the determination or assessment of an application for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.
- 7.13 Call-in requests, whereby in certain circumstances a Ward Councillor can require a proposal that would normally be determined under officers' delegated authority, to be determined by Committee, require the reasons for call-in to be recorded in writing and to refer solely to material planning

considerations. The Councillor must additionally commit to attending the Planning Committee at which the application is to be determined, to explain their concerns. A Councillor who fails to do so on two or more occasions within a year may be excluded from exercising these rights. The procedures for this are set out in the Planning Committee Procedure Rules.

- 7.14 Planning Committee Councillors should not decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Planning Committee Councillor to do so.
- 7.15 As previously outlined, Councillors must always be mindful of their responsibilities and duties under their Code of Conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this Code.

8 PRE-APPLICATION DISCUSSIONS

- 8.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged by the National Planning Policy Framework. However, it would be easy for such discussions to become, or to be seen by objectors to become, part of a lobbying process on the part of the potential applicant. For this reason, the Council have developed a pre-application process that enables engagement at the pre-application stage.
- 8.2 For major strategic applications, the Council offers a service to potential applicants, which includes presenting their schemes to the Council's Planning Committee. Details of this are set out in the Planning Committee Procedure Rules. This is the way in which Planning Committee Councillors engage with these schemes and there should therefore be no need to attend any other meeting with potential applicants or their agents/representatives.
- 8.3 In other cases, potential applicants may seek to meet Planning Committee Councillors. For minor or household applications, these can be treated as a form of lobbying and Councillors, including Planning Committee Councillors, should follow the advice set out above in section 7.
- 8.4 Where the application is more substantial, but not subject to pre-application committee presentations, these meetings will be subject to the following procedures:
- No meeting involving Planning Committee Councillors shall be convened without the presence of a Council planning officer for the entire duration of the meeting.
 - Understand that such meetings will attract a fee and make sure the applicant understands this.
 - Both this Code and the Members' Code of Conduct will apply when attending such meetings.
 - Any Planning Committee Councillor involved in such a meeting, who sits on the Committee that subsequently considers any resulting application, should declare their attendance at the meeting in the same way as lobbying would be declared.

- Officers (and any Councillor, if present) should make it clear from the outset that the discussion will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Any advice given should be consistent and in accordance with the Development Plan and officers should agree, prior to any meeting, on a consistent interpretation of Development Plan policies as applied to the particular proposal.
- Councillors should not become drawn into any negotiations, which should be done by officers to ensure that the authority's position is co-ordinated.
- A contemporaneous note of the meeting should be prepared by the planning officer attending and a copy sent to all parties for their agreement.
- The final version of the note of the meeting will be placed on the planning file and should a planning application subsequently be received, it will thereby be open to public inspection.

8.5 Councillors should not seek to arrange meetings that would circumvent the Council's normal pre-application procedures, including the need to charge applicants for such meetings.

8.6 Planning Committee Councillors should not attend pre-application meetings that are not organised through officers.

9 POST-SUBMISSION DISCUSSIONS

9.1 A Planning Committee Councillor should not usually be involved in discussions with a developer or agent when a planning application has been submitted and remains to be determined. Potentially, these discussions could be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.

9.2 There are limited circumstances when Planning Committee Councillors may legitimately engage in post-submission discussions. An example would be in the case of a large-scale development, where it is desirable for there to be a full understanding of the Council's planning and economic objectives. Such meetings will be organised by officers and run under the same procedural rules as pre-application discussions.

9.3 If a Planning Committee Councillor is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether it would be prudent in the circumstances to make notes when contacted. A Councillor should report to the [Head of Planning] any significant contact with the applicant or other parties, explaining the nature and purpose of the contact and their involvement, so that it can be recorded on the planning file.

9.4 Planning Committee Councillors should not attend post-submission meetings that are not organised through officers.

10 PLANNING APPEALS

10.1 Appeals against the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Councillors are able to attend. Councillors are encouraged to attend such hearings, as they can be a good learning

experience. This part of the Code is concerned with Councillors who wish to actively participate in these appeals.

- 10.2 If a Councillor wishes to attend a public inquiry or informal hearing as a Ward Councillor or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the [Head of Planning] to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Councillor, brings the Council into disrepute or puts the decision made at risk of challenge.
- 10.3 A Planning Committee Councillor cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on the Committee that made the decision, unless this is as part of the Council's case as decided by the [Head of Planning]. The decision of the Committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council's case on its planning merits, in accordance with the Committee's decision. The inspector is required to determine the appeal on its planning merits and therefore all representations should be so directed.
- 10.4 Where the appealed decision was contrary to the officer's recommendation, officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

11 PLANNING ENFORCEMENT

- 11.1 It is perfectly legitimate for Councillors to bring to the attention of the Planning Service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the [Head of Planning].
- 11.2 The Council's planning enforcement service operates to a priority system so that those breaches that cause the most harm are dealt with first. This priority system is designed to produce a fair and responsive enforcement service. Councillors must not seek to have matters that they have raised given preferential treatment merely because they are a Councillor.

12 COUNCILLOR TRAINING

- 12.1 Councillors may not participate in decision making at meetings of the Council's Planning Committee unless they have attended mandatory training. This will be provided by the Council's planning and legal services and will cover the principles of planning and probity in planning.
- 12.2 Whilst all new Planning Committee Councillors (and new substitutes) must attend this compulsory training before they can participate in the Council's Planning Committees, all other Planning Committee Councillors (and substitutes) are also encouraged to attend so that they can ensure that they keep up-to-date on these matters. All Planning Committee Councillors (and substitutes) must attend this training at least every two years, or as recommended individually or collectively by the Monitoring Officer.
- 12.3 All Planning Committee Councillors should endeavour to attend any other specialised training sessions provided, since these will be designed to extend

their knowledge of planning law, policy, procedures, and good practice, which will assist them in carrying out their role.

- 12.4 Training provided on planning related matters, whilst aimed at Planning Committee Councillors, is open to any Councillor with an interest to attend.

APPENDIX H DELEGATION PROCESS FLOW CHART

This flow chart relates to planning applications only and whether they are determined by Committee or under delegated powers. It does not cover pre-application presentations or other non-application planning matters, nor does it deal with speaking rights at either committee.

