

Name of meeting: Standards Committee
 Date: 14 May 2012

Title of report: Proposed revisions to the adopted Planning Protocol

Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	Yes / No or “not applicable” If yes give reason why N/A
Is it in the Council’s Forward Plan ?	Yes/ No or “not applicable” If yes give date it first went in N/A
Is it eligible for “call in” by Scrutiny ?	Yes/ No or “not applicable” If no give reason why not N/A
Date signed off by <u>Director</u> & name	
Is it signed off by the Director of Resources?	Yes/ No financial implications If yes give date
Is it signed off by the Acting Assistant Director - Legal & Governance?	Yes/ No legal implications If yes give date 8 May 2012
Cabinet member portfolio	Corporate

Electoral [wards](#) affected: All
 Ward councillors consulted: N/A

Public or private: Public

1. Purpose of report

The current Planning Protocol (attached as Appendix 1) was approved by Full Council on 8 December 2012. The Protocol was prepared having regard to the then current law on bias and predetermination.

On 15 January 2012 section 25 of the Localism Act 2011 came into force. This section amends the legal position regarding predetermination. Relevant parts of this section provide as follows:

25. *Prior indications of view of a matter not to amount to predetermination etc.*
 “(1) Subsection (2) applies if—
 (a) as a result of an allegation of bias or predetermination, or otherwise, there is an issue about the validity of a decision of a relevant authority, and

- (b) it is relevant to that issue whether the decision-maker, or any of the decision-makers, had or appeared to have had a closed mind (to any extent) when making the decision.*
- (2) A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—*
 - (a) the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and*
 - (b) the matter was relevant to the decision.*
- (3) Subsection (2) applies in relation to a decision-maker only if that decision-maker—*
 - (a) is a member (whether elected or not) of the relevant authority, or*
 - (b) is a co-opted member of that authority.*
- (5) This section applies only to decisions made after this section comes into force, but the reference in subsection (2)(a) to anything previously done includes things done before this section comes into force.”*

Amendments to the current Protocol are necessary to ensure that the document complies with the provisions of section 25 of the Localism Act 2011. This report is brought before members of the Standards Committee as the consideration and approval of protocols relating to member conduct fall within the terms of reference of this committee.

2. Key points

The proposed amendments to the current Protocol are shown underlined in Appendix 2 attached.

3. Implications for the Council

It is essential that the Council's Planning Protocol reflects current legislation.

4. Consultees and their opinions

Copies of this report have been circulated to members of the Corporate Governance & Audit Committee and their informal views will be sought at the meeting scheduled to be held on 11 May 2012.

5. Next steps

It is the Monitoring Officer's intention to report the proposed revisions to the Planning Protocol to the Annual Council meeting on 23 May 2012.

6. Officer recommendations and reasons

It is recommended that committee consider the proposed revisions to the Planning Protocol set out in Appendix 2 and resolve to refer the proposed amendments to Annual Council on 23 May 2012 for formal approval.

7. Cabinet portfolio holder recommendation

N/A

8. Contact officer and relevant papers

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KIRKLEES COUNCIL

**PROTOCOL FOR PLANNING COMMITTEES
AND SUB-COMMITTEES**

(Approved by Full Council on 8 December 2010)

1. BACKGROUND AND INTRODUCTION

1.1 This protocol replaces and updates that which was approved by a joint meeting of the Council's Standards Committee and the Planning & Highways Committee on 16 July 2007.

1.2 The aim of this protocol is to ensure that the planning process operates properly, legally and effectively and that there are no grounds for suggesting that a decision has been biased, partial or not properly considered and made in any way. It is also intended to help councillors work effectively and seek to achieve their aims within the regimes which govern development control.

1.3 Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgment and for justifiable, properly balanced reasons which must be relevant to planning issues. If for any reason you would have difficulty in complying with this protocol or if you would usually prefer to be able to champion your constituents' point of view, you should not accept appointment to the committee or sub-committee, nor attend as a substitute.

1.4 When the protocol applies: This protocol applies to councillors at all times when involved in the planning process. This includes taking part in decision making meetings of a planning committee or sub-committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as to planning applications. Part 11 of the protocol draws attention to issues affecting all councillors, whether or not involved in decision-making.

1.5 If you have any doubts about the application of this protocol to your own circumstances, you should seek early advice from the Assistant Director Legal & Governance or one of their staff, preferably well before any meeting takes place. Senior Planning Officers and Decision Support Officers are also able to assist.

2. RELATIONSHIP TO THE COUNCILLORS' CODE OF CONDUCT:

2.1 This protocol is additional to the councillors' code of conduct. You should always apply that code first to any issue arising and declare any personal or prejudicial interests which you may have and, in the case of a prejudicial interest, leave the meeting during the consideration of the item (unless you have been allowed to stay to make a statement as permitted by the revised code of conduct, in which case you should leave as soon as you have made that statement). As with all other matters, the duty to declare an interest also applies where it is a member of your family, a close associate of yours or your employer etc, who has an interest as defined in the code of conduct. It would be helpful if you could avoid confusing that sort of interest with the other issues raised under this protocol, especially those in part 3 below.

3. GUIDANCE REGARDING ISSUES OF BIAS, PREDETERMINATION AND PREDISPOSITION

3.1 Planning is not a quasi-judicial process. It is an administrative decision making process. Councillors who sit on planning committees cannot therefore be expected to have

the same strict level of independence and impartiality as judges or quasi-judges who make decisions in courts and tribunals.

3.2 Councillors are elected to provide and pursue policies in a situation of democratic accountability. Accordingly, members of planning committees are entitled and indeed expected, by those who have elected them, to have and express views on planning issues. They will have political allegiances and publicly known policies.

3.3 It is therefore perfectly permissible for members of a planning committee to be predisposed towards a view that is in favour of or against a planning application or development proposal. However, it is essential that, notwithstanding their predisposition, they retain an open mind as to the merits of the argument before they make the final decision. Failure to do so, or failure to demonstrate to applicants, objectors or other interested parties that they have done so, can result in allegations of bias and/or predetermination which can lead to the validity of the decision being called into question. It is for this reason that councillors' minds must not be closed to the merits of any planning application or decision or even appear to be closed ie by giving a clear impression that they have already decided how they will vote at the meeting and that nothing will change their minds.

Example of predisposition

- I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.
- This proposal is in Green Belt and the proposed extension would be inappropriate development. Its design doesn't seem to be particularly sympathetic to its surroundings. In such a prominent location there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved then I can't currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

Example of predetermination

- This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

3.4 Also, councillors cannot be seen to take part in any planning decision making processes where they have or may appear to have a vested interest in the outcome for eg. if they have a personal and/or a personal and prejudicial interest in a planning application. Taking part in these circumstances can lead to allegations of bias and the validity of the decision again being called into question. If councillors are shown to have been motivated by bias then, ultimately, the decision may be ruled by the courts as unlawful and quashed.

3.5 The basic legal position is that councillors may not be party to decisions in relation to which they are either actually biased (in the sense that they have a closed mind and have predetermined the outcome of the matter irrespective of the merits of any representations or arguments that may be put to them) or give an appearance of being biased.

The test that would be applied by the courts regarding apparent bias is:

Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

(NB. An informed observer should be taken to be someone who understands the democratic context and realities of working in a political environment)

3.6 In order to guard against allegations of bias and/or predetermination members of planning committees are therefore advised to follow the guidance set out below:

(1) Members with personal/prejudicial interests

- At planning committee and sub-committee meetings, ensure that you always declare relevant personal and prejudicial interests in accordance with the Members' Code of Conduct.
- Remember that:
 - (a) a direct financial interest in the outcome of a planning decision will automatically lead to an appearance of bias;
 - (b) a family relationship or close friendship between a member of a planning committee and the beneficiary of the decision may, and usually will, give rise to an appearance of bias;
 - (c) mere membership of a particular charity or group will not normally give rise to an appearance of bias on the part of the decision maker.

(2) Predetermination/predisposition

- It is lawful for members of planning committees and sub-committees to have, and to have expressed, views on controversial local matters (such matters may often have been raised as election issues).
- Members of planning committees and sub-committees are entitled to be predisposed to certain views.
- Members must at all times retain an open mind (ie in making decisions they must consider all relevant matters and approach their task with no preconceptions) right up to the point of making the decision . But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their political manifestos.

- Members must be trusted to abide by the rules which the law lays down ie that, whatever their views, they must approach their decision making with an open mind and be prepared to change their views if persuaded that they should do so.
- Evidence of political affiliation or of the adoption of policies towards a planning proposal will not by itself amount to an appearance of predetermination or bias
- Unanimity of approach by all members of a single political group when voting on a planning application should not necessarily lead to a conclusion that all or any of those members had a closed mind. Members will obviously attach importance, to differing degrees, to group unity and conformity with group policy. This is perfectly acceptable provided they understand that the ultimate decision is for them alone as individuals.
- Leading members of the authority who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making meetings solely on the ground that they were involved in the decision of the Executive to promote or approve the policy or proposal.

3.7 The guidance above has been prepared having regard to the current law on bias and predetermination. The contents of this note demonstrate that members responsible for making planning decisions do have considerable freedom to express views on applications and, in formulating such a view or predisposition, to be influenced by a number of factors including the policies of their political group and issues that they supported during an election campaign. However, members must at all times retain an open mind as to the merits of an application or proposal and demonstrate that they are willing (right up to the point of the decision) to take into account all material planning considerations.

3.8 Members who speak vociferously for or against a proposal thereby giving the impression that they have unequivocally and irrevocably made up their mind prior to the planning meeting may, therefore, find it more difficult to demonstrate that they have indeed retained an open mind. In these circumstances such members may consider that it would be prudent to step down from the committee and to speak at the meeting as ward councillor. Members can seek advice from the Acting Assistant Director – Legal & Governance regarding this matter or any of the issues raised above.

4. LOBBYING AND CONTACT WITH APPLICANTS AND OBJECTORS

4.1 Any councillor could be the subject of lobbying over planning issues. Lobbying occurs when an applicant, objector or supporter seeks to influence a councillor to change their mind or to adopt and support their point of view. This includes contact by letter, e-mail, 'phone or in person to discuss or put forward specific points of view regarding forthcoming planning decisions.

4.2 Lobbying is a normal and perfectly proper part of the political process. However, you need to understand and accept that where you are making a decision on a planning issue, you are acting in a different role from that of ward councillor. Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality

and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

4.2.1 Avoid organising support for or opposition to a planning application or involving yourself in such a process and avoid lobbying other councillors on the issue.

4.2.2 If applicants, potential applicants or objectors ask to meet you about a proposal ideally you should refer them to another councillor who does not serve on the planning sub-committee and will not be involved in the decision; alternatively refer them to an officer. If however, the proposal is complex, controversial or of major local significance, eg a new supermarket, landfill site, large housing estate, then you may consider that the process would benefit from engaging councillors in pre-application/determination discussions. In such a situation it will be important for you to follow the guidance set out in section 5 of this Protocol about pre-application/determination discussions.

4.2.3 If any one (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why, even though you are more than happy to listen to their views/concerns, you have to remain completely impartial until the final decision has been made.

4.2.4 Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of personal or prejudicial interests under the members' code of conduct.

4.2.5 Minimise social contacts with known developers and agents and refrain altogether from such contacts when pre-application work is under way or a planning application has been received and is being considered by the authority;

4.2.6 When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as clearly indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the subcommittee meeting. You can, if pressed, perhaps, indicate the sort of concerns or issues which you think you'll need to consider when making the decision, but remember that if you cannot clearly demonstrate that at the meeting you have an open mind and are balancing all the various issues and arguments, you run the risk of potentially invalidating the decision and making the Council subject to legal challenge. So make sure that you also say that you will not be making a final decision until the meeting.

4.2.7 If you cannot avoid expressing an unequivocal opinion on the decision beforehand, which could be construed by others as clearly indicating that you have a closed mind as to the merits of the application, then you should disclose this at the committee (as part of the disclosure of lobbying). You should not then vote on the item unless you made it clear when expressing the opinion that your views were preliminary only and that a final decision would be made at the sub-committee meeting when you had the opportunity to review all the issues and arguments. If you do have to drop out of a particular decision, you should not take part in the discussion on the item, but may, if you wish to speak, move away from the

other members of the committee to the public area and comment when invited to do so as with other non-committee members and the public.

4.2.8 Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to get their views across, tell them how to contact another councillor who can be more proactive in supporting/helping them, or refer them to officers who can explain the issues and reasons.

4.3 Public Meetings are unlikely to be necessary or appropriate in most cases, since the process was adopted of allowing applicants and objectors to attend and make comments at planning sub-committee meetings. Nevertheless, on occasion they may be appropriate where there is a need for a forum to allow clear expression of a volume of concern on a controversial proposal. It may also very occasionally be necessary and beneficial in order to assist in the determination of a planning issue. If so it is vital that you avoid acting in a way which could lead to an appearance of pre-judgement or bias. So, if anyone asks you to organise or attend a public meeting about a specific application, you should try to avoid doing so, and you should instead refer the request to officers. Wherever possible you should avoid attending any public meeting at which officers are not present - otherwise you may be accused (rightly or wrongly) of having done so because you favour one side or the other and it might well be difficult to avoid giving that impression. If you do attend, you should do so bearing in mind all the comments set out above and should ensure that it is made clear that you are unable to form or express any clear and unequivocal view before the committee meeting- but that obviously doesn't stop you from listening to what is said or making it clear that you are listening and highlighting the areas that are of most concern to you. Don't forget, though that you need to be able to differentiate, when you do make the decision, between issues which are relevant to planning decisions and those which are not. Officers will be able to assist by answering technical questions and helping to explain why you are unable to favour either side. The same advice as above applies to avoiding expressing any opinion, which would clearly indicate that you no longer had an open mind on the ultimate decision, at such a meeting.

The public meetings referred to here should be distinguished from briefings, developer presentations etc that are organised by officers as part of any pre-application/determination discussion process with councillors/members of the planning committee in relation to applications of major impact or significance (see section 5 below).

5. DISCUSSIONS BETWEEN POTENTIAL/CURRENT APPLICANTS AND THE COUNCIL RELATING TO MAJOR DEVELOPMENT PROPOSALS

5.1 Discussions between potential applicants/applicants and the council prior to the submission or determination of an application can always be helpful. However, they can be of considerable benefit to both parties in relation to development proposals that are complex, controversial or of major local significance eg large housing estates, waste disposal sites, wind farms, industrial estates/business parks and supermarkets. Unfortunately, it would be easy for such discussions to become, or be seen by objectors to become part of the lobbying process on the part of the applicant.

5.2 It is therefore essential that where any discussions are held in relation to such major development proposals it is done within carefully established guidelines (as set out below) to protect the council and councillors from allegations of bias, pre-determination etc.

5.3 All arrangements relating to pre-application/determination discussions for major development proposals should be made by officers. Where councillors receive a request to engage in such pre-application/determination discussions from an applicant or potential applicant they should refer such request to the Planning Case Officer who will consult the Chair of the relevant committee or sub-committee as to whether pre-application discussions are considered appropriate in the circumstances and, if so, the form that such discussions will take. **NB. This will not preclude councillors attending informal consultation events where there is no officer present.**

The most appropriate methods of engaging councillors in pre-application/determination discussions are:

- Interim committee reports on pre-application discussions (at the request of a councillor, subject to the approval of the Chair of the relevant committee or sub-committee and the Assistant Director Strategic Investment);
- Public developer presentations to committee;
- Development control forums.

Informal private briefings or private developer committee presentations may occasionally be appropriate but must be handled carefully to avoid third parties becoming suspicious of the process and the reasons for a private meeting.

5.4 Whatever method of pre-application/determination discussion is adopted, the following guidance will apply:

5.4.1 The purposes of councillors becoming engaged at that stage should be made clear by the relevant committee/sub-committee Chair or planning case officer at the start of the discussions. The purposes can be summarised as:

- Keeping councillors better informed on major applications and helping them to learn more about emerging proposals;
- Engaging members on issues to be dealt with in a formal submission;
- Taking account of emerging or existing community concerns at a formative stage;
- Obtaining initial member guidance for officer negotiations on major applications;
- Identifying issues to be dealt with in any further submissions;
- Reinforcing Councillors' roles in their communities.

5.4.2 The Chair or planning case officer will also make clear from the outset that the discussions will not bind the council to make a particular decision and that any views expressed are personal and provisional.

5.4.3 Officers should always be present with councillors at any such pre-application/determination discussions. They will be responsible for advising impartially on all planning issues including the development plan, the interpretation of relevant policies

and any material planning considerations. Councillors should avoid giving separate planning advice during such discussions as this could result in inconsistent information being given. Neither should councillors become drawn into negotiations with applicants or potential applicants.

5.4.4 A written record of all pre-application/determination discussions should always be made by the officer present. This note will be placed on the public planning case file to ensure transparency.

5.4.5 Discussions with councillors at pre-application/determination stage should not be seen as:

- A means by which to find out councillors' views on a proposal. Councillors may be in a position to give a preliminary view on a proposal but any members of the planning committee (who are likely to be determining the application when it is submitted) will be advised that they should not express a view which could give the impression that they have pre-determined their position;
- An opportunity to conduct negotiations on the application in public;
- Any substitute for the formal consultation and processing of an application;
- A means by which potential applicants can seek to hold confidential discussions with councillors on the merits of the proposal.

5.4.6 Any member of the planning committee who elects, at such discussions, to voice a clear and strong view for or against the proposal being discussed in pursuit of their community champion role could be considered to have pre-determined their position and prejudiced their ability to vote in relation to any forthcoming planning application. They should therefore seek advice from the Assistant Director Legal & Governance as to their future participation in the decision making process.

6. GUIDANCE TO COUNCILLORS WHO ARE ALSO MEMBERS OF A PARISH OR TOWN COUNCIL

6.1 The potential problem is that if you are involved in a meeting of the parish council or its planning committee which decides on the recommendations or comments which are to be given to KMC on particular planning applications and then are also a member of the planning subcommittee which makes the final decision on those applications, you are at risk of being considered to have already made up your mind before coming to that subcommittee and therefore being biased, in legal terms, thus invalidating the subcommittee's decision.

6.2 To minimise this risk, therefore, if you are a member of the KMC planning subcommittee you should always:

- i. make it clear at any meetings of the parish/town council that any views you express and your vote, if you give one, are based solely on the limited information which is before you at that meeting;
- ii. make it clear that you are reserving your judgement and independence, when any application comes before the KC subcommittee, to make a fresh decision on each application on the basis of all the relevant information which is available to that meeting and based also on your overriding duty to the whole community and not just the people of the area, ward or parish;

- iii. not in any way commit yourself as to how you may vote when the proposal comes before the KC subcommittee;
- iv. ensure that the above, or something to that effect, is noted in the parish minutes.

6.3 In addition, any member of a parish council (whether or not on its planning committee) needs to declare a personal interest at the KC planning subcommittee when considering any application on which the parish council has expressed a view or made comments. Clearly, if the parish council has a greater interest than that (eg the application has been made by the parish council or significantly affects parish property), you should declare a prejudicial interest. That can be done, of course, at the start of the planning subcommittee meeting in the normal way.

6.4 While the process above is a way of minimising the risk of successful challenge, it does need to be remembered that the public and press can misunderstand or (innocently or otherwise) misrepresent your actions which could lead to unjustified criticism or misguided legal challenge. There is also, of course, inevitably the risk that on occasion for some reason something may go wrong and the proper procedure not be appropriately followed. In the light of the increasing tendency to litigation, therefore, although this Council has not so far experienced such a problem, the best advice is, where possible, to avoid playing the dual role and therefore to choose whether to go on the parish council's planning committee or the KC subcommittee, but not both. That would be the only way of clearly avoiding any of the potential risks and problems referred to above.

7. COUNCILLOR COUNCIL PARTNERSHIP DEVELOPMENT AND DEVELOPMENT ON COUNCIL LAND

7.1 Many of the Council's functions give rise to development which requires planning permission. Similarly, many of the activities carried out through partnerships require planning permission. From time to time the Council will also dispose of land for purposes requiring planning consent. It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them as this could easily give rise to suspicion of bias or impropriety.

7.2 Such applications are dealt with in exactly the same way as any other planning application and members need to take care that they also treat them in the same way when making decisions. It's vital to demonstrate this split between promoting a scheme and making the planning decision; otherwise the latter will inevitably risk being challenged as biased.

7.3 If you were involved in a meeting which made a decision giving rise to the submission of such an application, you should avoid taking part in the decision making process unless you are confident that you can clearly demonstrate that you are able to approach the determination of the application with an entirely open mind. This will apply principally to members of the Cabinet, through meetings of either the Cabinet or a Cabinet committee. In addition, if you are a director on the board of a partnership company which is submitting an application then you will most probably be best advised to declare a prejudicial interest under the councillors' code of conduct and leave the meeting for the consideration of that item. Similarly, if the proposal is a major council-driven project of such significance to your ward or to the borough as a whole that you want to support it or express your clear views about it, you can do so, but then you will need to consider whether

or not it is appropriate for you to remove yourself from the decision-making on the planning application so that you do not expose yourself and the Council to allegations of bias or predetermination.

8. SITE VISITS

8.1 The purpose of a site visit is to enable committee members to see the physical attributes of the site and its setting which are part of the material considerations in cases where these are not readily capable of being appreciated from documentary material. Officers may arrange a site visit where they consider it to be appropriate.

8.2 You, as a ward councillor, may also request a site visit on any application being considered by committee within your ward, provided that the request is made in writing to the planning officer with a reason which relates to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 below to help you to formulate appropriate reasons in support of your site visit request) and takes account of the purpose of site visits mentioned above and which can be incorporated in the officer's report to committee; and the request is lodged as soon as possible and in any event before the finalisation of the agenda for the sub-committee at which the application is due to be considered in order to allow it to be included on the agenda and the itinerary. Remember, however, that if in that written request you express a strong opinion on the merits of the application, you may well disqualify yourself from taking part in the decision. Try to limit your comments to identifying issues which you think the site visit will help to clarify. This advice also applies if you request that a decision is referred to committee rather than being made by officers.

8.3 Alternatively, the committee may itself decide to defer an application for a site visit through the normal course of debate and vote.

8.4 On a site visit, councillors will have the opportunity to view the site and officers can point out significant features. You should try to avoid being lobbied by the public, but if this is unavoidable, you should react as in the guidance on lobbying above and declare the fact on return to the committee meeting room.

8.5 If other ward councillors attend a site visit, they should not carry out any lobbying of their own and should not join members of the planning committee on the site visit bus.

8.6 Anyone (public or ward member) who is unable to attend the meeting to present their views will not be able to use the site visit for that purpose and should, therefore, be encouraged to put their views in writing to the planning officers beforehand.

8.7 All members of the committee should attend site visits since they are an integral part of the committee decision-making process. However, since this does not always happen you should try to avoid asking officers for additional information until you get back to the meeting room. Nevertheless, to ensure that all councillors at the meeting have, as far as possible, the same information before them, officers will provide at the meeting a summary of any significant additional information provided or issues raised on the site visit.

9. CONDUCT AT THE COMMITTEE MEETING

9.1 Separate guidance set out in The Public Speaking Protocol is available for members of the public on the process allowing them to put their views in the course of the debate on

any particular application. Bear in mind that many of them will not be familiar with planning procedures or with what is or is not a material consideration. Nevertheless, they should obviously be treated with respect. It is also vital that the procedure for public comment is closely followed in every case, to avoid complaints that some individuals are being treated differently from others.

9.2 Councillors who attend the committee or sub-committee as observer in accordance with Council Procedure Rule 36 (CPR 36) together with any member of the committee who has indicated that because, for instance, they can no longer demonstrate that they retain an open mind as to the merits of an application, he/she will not be voting, but still intends to contribute to the debate, will be bound by the 5 minute time restriction specified in CPR 36.

9.3 Every effort will be made to ensure that the seating arrangements make it clear who are the members of the committee. Wherever possible, therefore, the public will be kept separate from the committee members and other members of the Council should also avoid sitting with the members of the committee.

9.4 If you are a member of the committee, you should, as far as possible, avoid contact with members of the public. This will ensure that you are not subject to last minute lobbying, or provision of information which is not available to the rest of the meeting, and it will also protect you from appearing to favour or have a relationship with one side or the other on a particular application. This applies before, during and immediately after the meeting. Only the chair should speak to members of the public during the meeting or ask questions (e.g. for clarification). If any other councillor needs clarification, they should raise the issue with the chair, who will decide how to deal with it.

9.5 Remember that you must be able to justify any decision on planning grounds. If you wish therefore to vote on a decision in a way which is different from the officers' recommendation, you should be clear what your reasons are for that.

9.6 Relevant planning issues, which you can take into account, include:

- The Development Plan and the various policies which it contains;
- National or regional guidance;
- The Council's supplementary planning guidance/documents [Remember that if you are proposing not to follow any one of the above three, then you'll need reasons for that too.];
- The planning history of the site;
- The visual impact of the development;
- Effect on public amenity;
- Access, traffic and highway considerations;
- Impact on listed buildings, conservation areas or protected trees;
- The views of local people insofar as they are based on relevant planning issues.

When formulating reasons which you consider will justify a decision contrary to the officer's original recommendation you should always have regard to the principles set out in paragraph 1.3 above.

Matters which are not material planning considerations and which, therefore, cannot be taken into account include:

- Effect on property values;
- The character, identity or personal circumstances of the applicant or objectors;
- Boundary or property disputes;
- How the application affects a view (as opposed to the wider effect on public amenity);
- Issues of commercial competition;
- Land or property values;
- Moral or ethical issues or judgments;
- Weight of numbers of public opposition or support in itself - as opposed to relevant planning basis for such views;
- Political manifesto commitments.

9.7 Officers will ensure that the practice of seeking clarification when councillors' reasons are in doubt is always pursued and sub-committee chairs, before putting to the vote a proposition or amendment differing from the recommendation should expressly obtain clarification of reasons. If councillors differ as to choice of reasons, then that should itself be the subject of separate amendments. Reasons will be particularly important where officers' advice is strong. Officers will normally indicate where a decision is a close call and the recommendation is therefore on balance. In those circumstances you may simply take a different view of the balance. Where the officer view is unequivocal you need first to be clear in your own mind why you disagree. Officers are professional and experienced and while they are no less fallible than anyone else, their views should be properly considered. It's unreasonable and won't achieve what you want if you simply disagree and then expect officers to work out why. It's your decision and they must be your reasons.

9.8 Similarly, if your view is that a policy, such as green belt, for instance, shouldn't be applied, you need to have a clear reason for that, relevant to the way the policy is expressed. Officers can help with those sorts of issues if you are clear yourself what the problem is. On the other hand, if you are clear in your reasons and clear that they are proper planning reasons, that will make it very much easier for officers (or indeed, you yourself) to defend and explain them if they are challenged on appeal or by judicial review. Ideally there should be a partnership here. Officers are professionals; councillors have democratic accountability. But both have to follow the rules.

9.9 It is the role of the Committee Chair (or Vice Chair if substituting) to guide, manage and control the meeting so that procedures are properly followed, everyone gets a fair chance to have their say, the debate remains focused and relevant, proper standards are maintained and the process is as efficient as possible leading to a clear and rational decision. Councillors (and officers) should do everything possible to co-operate and assist with that. As part of that role, the Chair (or Vice-Chair if substituting) may request that a recorded vote is taken on a particular application for eg. if the application is particularly controversial, there is considerable public interest in the proposal or the decision would be contrary to the officer recommendation or the development plan. It is also the role of the Chair (or Vice Chair if substituting) to summarise and clarify the decision of the committee for the benefit of members of the public so that there is no doubt as to the outcome of the debate.

10. TRAINING

10.1 Making good, justifiable planning decisions is not something which can be done by instinct.

10.2 Before serving on any committee making planning decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training, as referred to in this section, in both the procedural issues outlined in this protocol and in the basic principles of planning, so that you can understand the basis on which decisions need to be made and on which officers prepare reports. It will also help you to take a rational approach to the issues discussed in 9.7 above. -This requirement will also apply to training required to refresh and update knowledge and understanding.

10.3 Suitable training will be provided sufficient to ensure that councillors who wish to be involved in planning decisions can do so, but you do need to make an effort to attend, since it is not possible to make arrangements which are totally convenient for everybody.

10.4 Groups must not nominate anyone for membership of any committee which will be making planning decisions unless that councillor has either undergone training or is prepared to do so before taking part in the relevant committee meetings. Councillors should also be prepared to attend annual updating training. It is necessary for groups to identify and select the appropriate number of members from their group who fulfil these conditions.

10.5 Annual updating training will be provided. It is necessary that, in order to continue to sit on a planning committee or subcommittee, you will take part in this refresher training.

11. ADVICE TO ALL COUNCILLORS

General

11.1 Any councillor, whether or not involved in decision making on planning issues, could benefit from reading this protocol as it may assist from time to time in explaining issues to constituents who are puzzled by the planning process. All councillors also need to understand how best to represent their constituents when not involved in the decision making process.

11.2 You may well be lobbied by individuals in favour of or opposed to any application, or, indeed, you may have views of your own as the local ward councillor. If so, those views should be expressed to officers. You should avoid lobbying or trying to persuade members

of the decision making committee to come to a view beforehand. Doing so will only put at risk that member's ability to take part in the decision.

11.3 You should not, however, exert any improper pressure on officers to make a decision or recommendation contrary to their professional judgement. If you disagree with that judgement you can, of course, raise the issue with a more senior officer. Nor should you lobby members of the sub-committee - in particular make sure you avoid the temptation to seek the support of your ward or group colleagues on the planning sub-committees. Doing so could make any decision susceptible to challenge.

11.4 Please also note the advice on requesting site visits in section 8 which applies to all ward members.

11.5 Local ward councillors may attend site visits, but will not be able to carry out any lobbying on the merits of an application on such occasions.

11.6 Ward councillors may also attend the sub-committee meeting at which decisions are taken. If you do so, you should sit apart from the committee members, with those attending from the public. If you wish to speak on a particular application, you should do so only when specifically invited by the Chair and should act in accordance with the Public Speaking Protocol.

11.7 If you are unable to get to the meeting, then any views which you wish to express should be put in writing to the Planning Officer.

11.8 You should remember that officers have a duty to give impartial advice on planning applications and other planning matters and to make recommendations (or decisions on delegated matters) in the light of all the relevant planning issues using their professional judgement. Where there are disagreements between councillors and officers, these should be approached with mutual respect and while you may obviously express your disagreement, that should be on a rational basis and you should avoid personal criticism or abuse.

11.9 You will be informed when training in planning matters is being provided. While training is extremely important for councillors who will be making decisions, it is open to all and any councillor could benefit from the information which is provided.

Referring applications to committee

11.10 Under the officer delegation scheme, a ward member is able to refer for committee decision any application which would otherwise be determined by officers. Any such request must be made in writing and must specify their reasons for making the request which must reasonably relate to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 above to help you to formulate appropriate reasons in support of your request for referral to Committee). To be a valid request the Chair of the relevant committee or sub-committee must have confirmed that the ward member's reasons for making the request are acceptable. Requests should ideally be received before the earliest date for decision - i.e. three weeks after receipt of the application. However, requests received later than this will still be valid provided appropriate reasons are given in support of the request and the Chair is prepared to exercise his/her discretion to consider the late request.

11.11 Ward members who are also members of the committee (or substitutes) should remember that if, in your written request for referral of an application to committee, you express a strong opinion on the application which gives a clear impression that you have a closed mind as to the merits of the proposed development, you may well disqualify yourself from taking part in the decision.

Planning applications submitted by councillors and members of their families.

11.12 Planning applications that are submitted to the LPA by serving councillors, their close associates and relatives, can easily give rise to suspicions of impropriety. Nevertheless, it is perfectly legitimate for such applications to be submitted to the authority for determination. However, it is vital to ensure that these applications are handled in such a way that gives no grounds for accusations of bias or preferential treatment.

11.13 The officer delegation scheme requires that all planning applications submitted by or on behalf of any elected member of the council (in their personal capacity) or any member of their family shall be referred to committee for decision.

11.14 A councillor who has submitted a planning application in their personal capacity will be considered to have a prejudicial interest in that application. You will also be considered to have a prejudicial interest in any application submitted by a member of your family or a close associate. Accordingly, if you are a member of the planning committee (or sitting as a substitute), you should not take part in the decision making process relating to the application and must leave the room. You may, however, prior to leaving the room, take the opportunity to make a statement to the committee to explain and justify your proposal. As the applicant always addresses the committee last, you will have the opportunity to hear the planning officer's presentation and the representations of objectors and any other interested parties before making your statement and then leaving the room.

11.15 It is important to remember that councillors must not seek improperly to influence the decision on their application. Some councillors may therefore, in this situation, consider it unwise to make a statement to the committee and instead may prefer to rely on a third party or planning agent to make their case to the committee for them. However, councillors who do choose to make a statement to the committee personally should observe the same 3 minute time limit set out in the Public Speaking Protocol that applies to members of the public when addressing the committee.

11.16 This advice also applies to all councillors who are not members of the committee or acting as substitute but who choose to attend the committee at which their planning application (or that of their family member) is due to be determined.

KIRKLEES COUNCIL

**PROTOCOL FOR PLANNING COMMITTEES
AND SUB-COMMITTEES**

(Approved by Full Council on XXXX)

1. BACKGROUND AND INTRODUCTION

1.1 This protocol replaces and updates that which was approved by Full Council on 8th December 2010.

1.2 The aim of this protocol is to ensure that the planning process operates properly, legally and effectively and that there are no grounds for suggesting that a decision has been biased, partial or not properly considered and made in any way. It is also intended to help councillors work effectively and seek to achieve their aims within the regimes which govern development control.

1.3 Your role as a member of the planning authority is to make planning decisions in accordance with the relevant statutory tests, as well as openly, impartially, with sound judgment and for justifiable, properly balanced reasons which must be relevant to planning issues. If for any reason you would have difficulty in complying with this protocol or if you would usually prefer to be able to champion your constituents' point of view, you should not accept appointment to the committee or sub-committee, nor attend as a substitute.

1.4 When the protocol applies: This protocol applies to councillors at all times when involved in the planning process. This includes taking part in decision making meetings of a planning committee or sub-committee, or when involved on less formal occasions, such as meetings with officers or the public. It applies equally to planning enforcement matters or to policy issues relating to a specific site as to planning applications. Part 11 of the protocol draws attention to issues affecting all councillors, whether or not involved in decision-making.

1.5 If you have any doubts about the application of this protocol to your own circumstances, you should seek early advice from the Assistant Director Legal & Governance or one of their staff, preferably well before any meeting takes place. Senior Planning Officers and Decision Support Officers are also able to assist.

2. RELATIONSHIP TO THE COUNCILLORS' CODE OF CONDUCT:

2.1 This protocol is additional to the councillors' code of conduct. You should always apply that code first to any issue arising and declare any personal or prejudicial interests which you may have and, in the case of a prejudicial interest, leave the meeting during the consideration of the item (unless you have been allowed to stay to make a statement as permitted by the revised code of conduct, in which case you should leave as soon as you have made that statement). As with all other matters, the duty to declare an interest also applies where it is a member of your family, a close associate of yours or your employer etc, who has an interest as defined in the code of conduct. It would be helpful if you could avoid confusing that sort of interest with the other issues raised under this protocol, especially those in part 3 below.

3. LEGISLATION AND GUIDANCE REGARDING ISSUES OF BIAS, PREDETERMINATION AND PREDISPOSITION

3.1 Planning is not a quasi-judicial process. It is an administrative decision making process, which must be carried out in accordance with relevant statutory requirements. Councillors who sit on planning committees cannot therefore be expected to have the same

strict level of independence and impartiality as judges or quasi-judges who make decisions in courts and tribunals.

3.2 Councillors are elected to provide and pursue policies in a situation of democratic accountability. Accordingly, members of planning committees are entitled and indeed expected, by those who have elected them, to have and to express views on planning issues. They will have political allegiances and publicly known policies although Councillors must always remember that planning decisions are not political decisions.

3.3 It is therefore perfectly permissible for members of a planning committee to be predisposed towards a view that is in favour of or against a planning application or development proposal. Notwithstanding their predisposition, Members should retain an open mind as to the merits of the argument before they make the final decision. Failure to do so, or failure to demonstrate to applicants, objectors or other interested parties that they have done so, can result in allegations of bias and/or predetermination which can lead to the validity of the decision being called into question. It is for this reason that councillors' minds must not be closed to the merits of any planning application or decision or even appear to be closed ie by giving a clear impression that they have already decided how they will vote at the meeting and that nothing will change their minds.

Example of predisposition

- I am very concerned about the impact of this proposal on the local highway network. It already takes 25 minutes to get through the crossroads at peak times. I want to see convincing evidence from the applicant that this proposal will not make matters even worse.
- This proposal is in Green Belt and the proposed extension would be inappropriate development. Its design doesn't seem to be particularly sympathetic to its surroundings. In such a prominent location there is real potential for such a development to have a very damaging effect on the open character of the area. Green Belt development needs to be handled particularly sensitively. Therefore, unless the applicant can convince me that this would be an appropriate development in the Green Belt or there are very special circumstances why it should be approved then I can't currently see how I will be able to support this application. The applicant needs to make a stronger case and provide more information.

Example of predetermination

- This proposal is a disaster waiting to happen. Under no circumstances could I ever support approval of this application. The applicant needs to go back to the drawing board and have a complete rethink or, ideally, he should do us all a favour and abandon this completely.

3.4 Also, councillors cannot be seen to take part in any planning decision making processes where they have or may appear to have a vested interest in the outcome for eg. if they have a personal and/or a personal and prejudicial interest in a planning application. Taking part in these circumstances can lead to allegations of bias and the validity of the decision again being called into question. If councillors are shown to have been motivated by bias then, ultimately, the decision may be ruled by the courts as unlawful and quashed.

3.5 The basic legal position is that councillors may not be party to decisions in relation to which they are either actually biased (in the sense that they have a closed mind and have predetermined the outcome of the matter irrespective of the merits of any representations or arguments that may be put to them) or give an appearance of being biased.

The test that would be applied by the courts regarding apparent bias is:

Would a fair-minded and informed observer, having considered the facts, decide there is a real possibility that the councillor had predetermined the issue or was biased?

(NB. An informed observer should be taken to be someone who understands the democratic context and realities of working in a political environment)

3.6 However, the Courts will not consider a Councillor making a decision to have had a "closed mind" when making that decision just because the Councillor had previously done anything that (directly or indirectly) indicated the view that would (or might) be taken in relation to a given matter (provided the matter was relevant to the decision).¹

3.7 In order to guard against allegations of bias and/or predetermination members of planning committees are therefore advised to follow the guidance set out below:

(1) Members with personal/prejudicial interests

- At planning committee and sub-committee meetings, ensure that you always declare relevant personal and prejudicial interests in accordance with the Members' Code of Conduct.
- Remember that:
 - (a) a direct financial interest in the outcome of a planning decision will automatically lead to an appearance of bias;
 - (b) a family relationship or close friendship between a member of a planning committee and the beneficiary of the decision may, and usually will, give rise to an appearance of bias;
 - (c) mere membership of a particular charity or group will not normally give rise to an appearance of bias on the part of the decision maker.

(2) Predetermination/predisposition

- It is lawful for members of planning committees and sub-committees to have, and to have expressed, views on controversial local matters (such matters may often have been raised as election issues).
- Members of planning committees and sub-committees are entitled to be predisposed to certain views. However, such views must be relevant to the decision, in order to influence the decision.

¹ See s.25 Localism Act 2011

- Members must at all times retain an open mind (ie in making decisions they must consider all relevant matters) right up to the point of making the decision . But they are entitled to have regard to and apply policies in which they believe, particularly if those policies have been part of their political manifestos.
- Members must be trusted to abide by the rules which the law lays down ie that, whatever their views, they must approach their decision making with an open mind and be prepared to change their views if persuaded that they should do so.
- Evidence of political affiliation or of the adoption of policies towards a planning proposal will not by itself amount to an appearance of predetermination or bias
- Unanimity of approach by all members of a single political group when voting on a planning application should not necessarily lead to a conclusion that all or any of those members had a closed mind. Members will obviously attach importance, to differing degrees, to group unity and conformity with group policy. This is perfectly acceptable provided they understand that the ultimate decision is for them alone as individuals.
- Leading members of the authority who have participated in the development of planning policies and proposals need not and should not normally exclude themselves from decision making meetings solely on the ground that they were involved in the decision of the Executive to promote or approve the policy or proposal.

3.8 The guidance above has been prepared having regard to the current law on bias and predetermination. The contents of this note demonstrate that members responsible for making planning decisions do have considerable freedom to express views on applications and, in formulating such a view or predisposition, to be influenced by a number of factors including the policies of their political group and issues that they supported during an election campaign. However, members must at all times retain an open mind as to the merits of an application or proposal and demonstrate that they are willing (right up to the point of the decision) to take into account all material planning considerations.

3.9 The application of such guidance to a specific case may not always be straight forward. Accordingly, Members can and should seek advice from the Acting Assistant Director – Legal & Governance. This should minimise the risk of administrative decisions being the subject of time consuming and costly legal challenges.

4. LOBBYING AND CONTACT WITH APPLICANTS AND OBJECTORS

4.1 Any councillor could be the subject of lobbying over planning issues. Lobbying occurs when an applicant, objector or supporter seeks to influence a councillor to change their mind or to adopt and support their point of view. This includes contact by letter, e-mail, 'phone or in person to discuss or put forward specific points of view regarding forthcoming planning decisions.

4.2 Lobbying is a normal and perfectly proper part of the political process. However, you need to understand and accept that where you are making a decision on a planning issue,

you are acting in a different role from that of ward councillor. Lobbying can, therefore, unless care and common sense are exercised by all concerned, lead to your impartiality and integrity being called into question. In order to avoid any such criticism or legal challenge and to preserve your right to vote on an application, you should follow the following advice.

4.2.1 If applicants, potential applicants or objectors ask to meet you about a proposal, you should consider referring them to another councillor who does not serve on the planning sub-committee and will not be involved in the decision; alternatively refer them to an officer. If however, the proposal is complex, controversial or of major local significance, eg a new supermarket, landfill site, large housing estate, then you may consider that the process would benefit from engaging councillors in pre-application/determination discussions. In such a situation it will be important for you to follow the guidance set out in section 5 of this Protocol about pre-application/determination discussions.

4.2.2 If any one (including another councillor) does lobby you or raise issues about a particular proposal, refer them to officers for advice on procedure and suggest that they send their comments to officers so that they can be included in the committee report; it is also a good idea to explain why, even though you are more than happy to listen to their views/concerns, you have to remain impartial until the final decision has been made.

4.2.3 Keep a record of any approaches by lobbyists and the response given or action taken; these records should be incorporated in the form attached as an appendix to this protocol and the relevant records produced at the start of each sub-committee meeting - but note that this is a separate process from that which relates to declaration of personal or prejudicial interests under the members' code of conduct.

4.2.4 Minimise social contacts with known developers and agents and refrain altogether from such contacts when pre-application work is under way or a planning application has been received and is being considered by the authority;

4.2.5 When approached by anybody (including the press) regarding a particular application, take care to avoid expressing an opinion which others might regard as clearly indicating that you have already made up your mind on the issue before hearing all the information and arguments presented at the subcommittee meeting. So make sure that you say that you will not be making a final decision until the meeting.

4.2.6 If you have done or said anything which (directly or indirectly) indicated the view you would (or might) take in relation to a specific matter: it is good practice to disclose this at the committee meeting (as part of the disclosure of lobbying). You will be entitled to vote on the item but you should: (i) explain how your view is relevant to the decision and (ii) make it clear that your view was based on the evidence you had available at that time and (iii) that your final decision will be based on the final evidence and submissions available at the time of the decision.

4.2.7 Remember that your overriding duty in this role is to the whole community not just to the people in your ward and, taking into account the need to make decisions impartially, you should not improperly favour any person, company, group or locality or appear to do so. If local people put you under pressure, or you want to try to be as helpful as possible, try to explain the reasons why you can't favour one side or the other, tell them the best way to

get their views across, tell them how to contact another councillor who can be more proactive in supporting/helping them, or refer them to officers who can explain the issues and reasons. However, local opposition or support for a proposal is not in itself a valid reason for granting or refusing a planning permission, unless it is founded on valid planning reasons.

4.3 Public Meetings are unlikely to be necessary or appropriate in most cases, since the process was adopted of allowing applicants and objectors to attend and make comments at planning sub-committee meetings. Nevertheless, on occasion they may be appropriate where there is a need for a forum to allow clear expression of a volume of concern on a controversial proposal. It may also very occasionally be necessary and beneficial in order to assist in the determination of a planning issue. If anyone asks you to organise or attend a public meeting about a specific application, you should refer the request to officers. Wherever possible you should avoid attending any public meeting at which officers are not present. If you do attend, you should do so bearing in mind all the comments set out above.

4.4 The public meetings referred to here should be distinguished from briefings, developer presentations etc that are organised by officers as part of any pre-application/determination discussion process with councillors/members of the planning committee in relation to applications of major impact or significance (see section 5 below).

5. DISCUSSIONS BETWEEN POTENTIAL/CURRENT APPLICANTS AND THE COUNCIL RELATING TO MAJOR DEVELOPMENT PROPOSALS

5.1 Discussions between potential applicants/applicants and the council prior to the submission or determination of an application can always be helpful. However, they can be of particular benefit to both parties in relation to development proposals that are complex, controversial or of major local significance eg large housing estates, waste disposal sites, wind farms, industrial estates/business parks and supermarkets. Unfortunately, it would be easy for such discussions to become, or be seen by objectors to become, part of the lobbying process on the part of the applicant.

5.2 It is therefore essential that where any discussions are held in relation to such major development proposals it is done within carefully established guidelines (as set out below) to protect the council and councillors from allegations of bias, pre-determination etc.

5.3 All arrangements relating to pre-application/determination discussions for major development proposals should be made by officers. Where councillors receive a request to engage in such pre-application/determination discussions from an applicant or potential applicant they should refer such request to the Planning Case Officer who will consult the Chair of the relevant committee or sub-committee as to whether pre-application discussions are considered appropriate in the circumstances and, if so, the form that such discussions will take. **NB. This will not preclude councillors attending informal consultation events where there is no officer present.**

The most appropriate methods of engaging councillors in pre-application/determination discussions are:

- Interim committee reports on pre-application discussions (at the request of a councillor, subject to the approval of the Chair of the relevant committee or sub-committee and the Assistant Director Strategic Investment);

- Public developer presentations to committee;
- Development control forums.

Informal private briefings or private developer committee presentations may occasionally be appropriate but must be handled carefully to avoid third parties becoming suspicious of the process and the reasons for a private meeting.

5.4 Whatever method of pre-application/determination discussion is adopted, the following guidance will apply:

5.4.1 The purposes of councillors becoming engaged at that stage should be made clear by the relevant committee/sub-committee Chair or planning case officer at the start of the discussions. The purposes can be summarised as:

- Keeping councillors better informed on major applications and helping them to learn more about emerging proposals;
- Engaging members on issues to be dealt with in a formal submission;
- Taking account of emerging or existing community concerns at a formative stage;
- Obtaining initial member guidance for officer negotiations on major applications;
- Identifying issues to be dealt with in any further submissions;
- Reinforcing Councillors' roles in their communities.

5.4.2 The Chair or planning case officer will also make clear from the outset that the discussions will not bind the council to make a particular decision and that any views expressed are personal and provisional.

5.4.3 Officers should always be present with councillors at any such pre-application/determination discussions. They will be responsible for advising impartially on all planning issues including the development plan, the interpretation of relevant policies and any material planning considerations. Councillors should avoid giving separate planning advice during such discussions as this could result in inconsistent information being given. Neither should councillors become drawn into negotiations with applicants or potential applicants.

5.4.4 A written record of all pre-application/determination discussions should always be made by the officer present. This note will be placed on the public planning case file to ensure transparency.

5.4.5 Discussions with councillors at pre-application/determination stage should not be seen as:

- A means by which to find out councillors' views on a proposal. Councillors may be in a position to give a preliminary view on a proposal but any members of the planning committee (who are likely to be determining the application when it is submitted) will be advised that they should not express a view which could give the impression that they have finally determined their position (as they will not have all the relevant evidence and submissions at that time);

- An opportunity to conduct negotiations on the application in public;
- Any substitute for the formal consultation and processing of an application;
- A means by which potential applicants can seek to hold confidential discussions with councillors on the merits of the proposal.

5.4.6 Any member of the planning committee who elects, at such discussions, to voice a clear and strong view for or against the proposal being discussed in pursuit of their community champion role should seek advice from the Assistant Director Legal & Governance as to their future participation in the decision making process.

6. GUIDANCE TO COUNCILLORS WHO ARE ALSO MEMBERS OF A PARISH OR TOWN COUNCIL

6.1 The potential problem is that if you are involved in a meeting of the parish council or its planning committee which decides on the recommendations or comments which are to be given to KMC on particular planning applications and then are also a member of the planning subcommittee which makes the final decision on those applications, you are at risk of being considered to have already made up your mind before coming to that subcommittee.

6.2 To minimise this risk, therefore, if you are a member of the KMC planning subcommittee you should always:

- i. make it clear at any meetings of the parish/town council that any views you express and your vote, if you give one, are based solely on the information which is before you at that meeting;
- ii. make it clear that you are reserving your judgement and independence, when any application comes before the KC subcommittee, to make a fresh decision on each application on the basis of all the relevant information which is available to that meeting and based also on your overriding duty to the whole community and not just the people of the area, ward or parish;
- iii. not in any way commit yourself as to how you may vote when the proposal comes before the KC subcommittee;
- iv. ensure that the above, or something to that effect, is noted in the parish minutes.

6.3 In addition, any member of a parish council (whether or not on its planning committee) needs to declare a personal interest at the KC planning subcommittee when considering any application on which the parish council has expressed a view or made comments. Clearly, if the parish council has a greater interest than that (eg the application has been made by the parish council or significantly affects parish property), you should declare a prejudicial interest. That can be done, of course, at the start of the planning subcommittee meeting in the normal way.

6.4 While the process above is a way of minimising the risk of successful challenge, it does need to be remembered that the public and press can misunderstand or (innocently or otherwise) misrepresent your actions which could lead to unjustified criticism or misguided legal challenge. There is also, of course, inevitably the risk that on occasion for some reason something may go wrong and the proper procedure may not be appropriately followed. In the light of the increasing tendency to litigation, therefore, although this Council

has not so far experienced such a problem, the best advice is, where possible, to avoid playing the dual role and therefore to choose whether to go on the parish council's planning committee or the KC subcommittee, but not both. That would be the only way of clearly avoiding any of the potential risks and problems referred to above.

7. COUNCILLOR COUNCIL PARTNERSHIP DEVELOPMENT AND DEVELOPMENT ON COUNCIL LAND

7.1 Many of the Council's functions give rise to development which requires planning permission. Similarly, many of the activities carried out through partnerships require planning permission. From time to time the Council will also dispose of land for purposes requiring planning consent. It is important to ensure that particular care is taken with such applications to demonstrate that no preferential treatment is given to them as this could easily give rise to suspicion of bias or impropriety.

7.2 Such applications are dealt with in exactly the same way as any other planning application and members need to take care that they also treat them in the same way when making decisions. It's vital to demonstrate this split between promoting a scheme and making the planning decision; otherwise the latter will inevitably risk being challenged.

7.3 If you were involved in a meeting which made a decision giving rise to the submission of such an application, you should avoid taking part in the decision making process unless you are confident that you can clearly demonstrate that you are able to approach the determination of the application with an open mind. This will apply principally to members of the Cabinet, through meetings of either the Cabinet or a Cabinet committee. In addition, if you are a director on the board of a partnership company which is submitting an application then you will most probably be best advised to declare a prejudicial interest under the councillors' code of conduct and leave the meeting for the consideration of that item. Similarly, if the proposal is a major council-driven project of such significance to your ward or to the borough as a whole that you want to support it or express your clear views about it, you can do so, but then you will need to consider whether or not it is appropriate for you to remove yourself from the decision-making on the planning application so that you do not expose yourself and the Council to allegations of bias or predetermination.

8. SITE VISITS

8.1 The purpose of a site visit is to enable committee members to see the physical attributes of the site and its setting which are part of the material considerations in cases where these are not readily capable of being appreciated from documentary material. Officers may arrange a site visit where they consider it to be appropriate.

8.2 You, as a ward councillor, may also request a site visit on any application being considered by committee within your ward, provided that the request is made in writing to the planning officer with a reason which relates to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 below to help you to formulate appropriate reasons in support of your site visit request) and takes account of the purpose of site visits mentioned above and which can be incorporated in the officer's report to committee; and the request is lodged as soon as possible and in any event before the finalisation of the agenda for the sub-committee at which the application is due to be considered in order to allow it to be included on the agenda and the itinerary. Try to limit your comments to identifying issues which you think the site visit will help to clarify. This

advice also applies if you request that a decision is referred to committee rather than being made by officers.

8.3 Alternatively, the committee may itself decide to defer an application for a site visit through the normal course of debate and vote.

8.4 On a site visit, councillors will have the opportunity to view the site and officers can point out significant features. You should try to avoid being lobbied by the public, but if this is unavoidable, you should react as in the guidance on lobbying above and declare the fact on return to the committee meeting room.

8.5 If other ward councillors attend a site visit, they should not carry out any lobbying of their own and should not join members of the planning committee on the site visit bus.

8.6 Anyone (public or ward member) who is unable to attend the meeting to present their views will not be able to use the site visit for that purpose and should, therefore, be encouraged to put their views in writing to the planning officers beforehand.

8.7 All members of the committee should attend site visits since they are an integral part of the committee decision- making process. However, since this does not always happen you should try to avoid asking officers for additional information until you get back to the meeting room. Nevertheless, to ensure that all councillors at the meeting have, as far as possible, the same information before them, officers will provide at the meeting a summary of any significant additional information provided or issues raised on the site visit.

9. CONDUCT AT THE COMMITTEE MEETING

9.1 Separate guidance set out in The Public Speaking Protocol is available for members of the public on the process allowing them to put their views in the course of the debate on any particular application. Bear in mind that many of them will not be familiar with planning procedures or with what is or is not a material consideration. Nevertheless, they should obviously be treated with respect. It is also vital that the procedure for public comment is closely followed in every case, to avoid complaints that some individuals are being treated differently from others.

9.2 Councillors who attend the committee or sub-committee as observers in accordance with Council Procedure Rule 36 (CPR 36) together with any member of the committee who has indicated that because, for instance, they can no longer demonstrate that they retain an open mind as to the merits of an application, he/she will not be voting, but still intends to contribute to the debate, will be bound by the 5 minute time restriction specified in CPR 36.

9.3 Every effort will be made to ensure that the seating arrangements make it clear who are the members of the committee. Wherever possible, therefore, the public will be kept separate from the committee members and other members of the Council should also avoid sitting with the members of the committee.

9.4 If you are a member of the committee, you should, as far as possible, avoid contact with members of the public. This will ensure that you are not subject to last minute lobbying, or provision of information which is not available to the rest of the meeting, and it will also protect you from appearing to favour or have a relationship with one side or the other on a particular application. This applies before, during and immediately after the meeting. Only the chair should speak to members of the public during the meeting or ask questions (e.g.

for clarification). If any other councillor needs clarification, they should raise the issue with the chair, who will decide how to deal with it.

9.5 Remember that you must be able to justify any decision on planning grounds. If you wish therefore to vote on a decision in a way which is different from the officers' recommendation, you should be clear what your reasons are for that.

9.6 Relevant planning issues, which you can take into account, include:

- The Development Plan and the various policies which it contains;
- National or regional guidance;
- The Council's supplementary planning guidance/documents [Remember that if you are proposing not to follow any one of the above three, then you'll need reasons for that too.];
- The planning history of the site;
- The visual impact of the development;
- Effect on public amenity;
- Access, traffic and highway considerations;
- Impact on listed buildings, conservation areas or protected trees;
- The views of local people insofar as they are based on relevant planning issues.

When formulating reasons which you consider will justify a decision contrary to the officer's original recommendation you should always have regard to the principles set out in paragraph 1.3 above.

Matters which are not material planning considerations and which, therefore, cannot be taken into account include:

- Effect on property values;
- The character, identity or personal circumstances of the applicant or objectors;
- Boundary or property disputes;
- How the application affects a view (as opposed to the wider effect on public amenity);
-
- Land or property values;

- Moral or ethical issues or judgments;
- Weight of numbers of public opposition or support in itself - as opposed to relevant planning basis for such views;
- Political manifesto commitments.

9.7 Officers will ensure that the practice of seeking clarification when councillors' reasons are in doubt is always pursued and sub-committee chairs, before putting to the vote a proposition or amendment differing from the recommendation should expressly obtain clarification of reasons. If councillors differ as to choice of reasons, then that should itself be the subject of separate amendments. Reasons will be particularly important where officers' advice is strong. Officers will normally indicate where a decision is a close call and the recommendation is therefore on balance. In those circumstances you may simply take a different view of the balance. Where the officer view is unequivocal you need first to be clear in your own mind why you disagree. Officers are professional and experienced and while they are no less fallible than anyone else, their views should be properly considered. It's unreasonable and won't achieve what you want if you simply disagree and then expect officers to work out why. It's your decision and they must be your reasons.

9.8 Similarly, if your view is that a policy, such as green belt, for instance, shouldn't be applied, you need to have a clear reason for that, relevant to the way the policy is expressed. Officers can help with those sorts of issues if you are clear yourself what the problem is. On the other hand, if you are clear in your reasons and clear that they are proper planning reasons, that will make it very much easier for officers (or indeed, you yourself) to defend and explain them if they are challenged on appeal or by judicial review. Ideally there should be a partnership here. Officers are professionals; councillors have democratic accountability. But both have to follow the rules.

9.9 It is the role of the Committee Chair (or Vice Chair if substituting) to guide, manage and control the meeting so that procedures are properly followed, everyone gets a fair chance to have their say, the debate remains focused and relevant, proper standards are maintained and the process is as efficient as possible leading to a clear and rational decision. Councillors (and officers) should do everything possible to co-operate and assist with that. As part of that role, the Chair (or Vice-Chair if substituting) may request that a recorded vote is taken on a particular application for eg. if the application is particularly controversial, there is considerable public interest in the proposal or the decision would be contrary to the officer recommendation or the development plan. It is also the role of the Chair (or Vice Chair if substituting) to summarise and clarify the decision of the committee for the benefit of members of the public so that there is no doubt as to the outcome of the debate.

10. TRAINING

10.1 Making good, justifiable planning decisions is not something which can be done by instinct.

10.2 Before serving on any committee making planning decisions (whether as a full member or as a substitute) any councillor must have undergone satisfactory training, as referred to in this section, in both the procedural issues outlined in this protocol and in the basic principles of planning, so that you can understand the basis on which decisions need to be made and on which officers prepare reports. It will also help you to take a rational

approach to the issues discussed in 9.7 above. -This requirement will also apply to training required to refresh and update knowledge and understanding.

10.3 Suitable training will be provided sufficient to ensure that councillors who wish to be involved in planning decisions can do so, but you do need to make an effort to attend, since it is not possible to make arrangements which are totally convenient for everybody.

10.4 Groups must not nominate anyone for membership of any committee which will be making planning decisions unless that councillor has either undergone training or is prepared to do so before taking part in the relevant committee meetings. Councillors should also be prepared to attend annual updating training. It is necessary for groups to identify and select the appropriate number of members from their group who fulfill these conditions.

10.5 Annual updating training will be provided. It is necessary that, in order to continue to sit on a planning committee or subcommittee, you will take part in this refresher training.

11. ADVICE TO ALL COUNCILLORS

General

11.1 Any councillor, whether or not involved in decision making on planning issues, could benefit from reading this protocol as it may assist from time to time in explaining issues to constituents who are puzzled by the planning process. All councillors also need to understand how best to represent their constituents when not involved in the decision making process.

11.2 You may well be lobbied by individuals in favour of or opposed to any application, or, indeed, you may have views of your own as the local ward councillor. If so, those views should be expressed to officers. You should avoid lobbying or trying to persuade members of the decision making committee to come to a view beforehand. Doing so will only put at risk that member's ability to take part in the decision.

11.3 You should not, however, exert any improper pressure on officers to make a decision or recommendation contrary to their professional judgement. If you disagree with that judgement you can, of course, raise the issue with a more senior officer. Nor should you lobby members of the sub-committee - in particular make sure you avoid the temptation to seek the support of your ward or group colleagues on the planning sub-committees. Doing so could make any decision susceptible to challenge.

11.4 Please also note the advice on requesting site visits in section 8 which applies to all ward members.

11.5 Local ward councillors may attend site visits, but will not be able to carry out any lobbying on the merits of an application on such occasions.

11.6 Ward councillors may also attend the sub-committee meeting at which decisions are taken. If you do so, you should sit apart from the committee members, with those attending from the public. If you wish to speak on a particular application, you should do so only when specifically invited by the Chair and should act in accordance with the Public Speaking Protocol.

11.7 If you are unable to get to the meeting, then any views which you wish to express should be put in writing to the Planning Officer.

11.8 You should remember that officers have a duty to give impartial advice on planning applications and other planning matters and to make recommendations (or decisions on delegated matters) in the light of all the relevant planning issues using their professional judgement. Where there are disagreements between councillors and officers, these should be approached with mutual respect and while you may obviously express your disagreement, that should be on a rational basis and you should avoid personal criticism or abuse.

11.9 You will be informed when training in planning matters is being provided. While training is extremely important for councillors who will be making decisions, it is open to all and any councillor could benefit from the information which is provided.

Referring applications to committee

11.10 Under the officer delegation scheme, a ward member is able to refer for committee decision any application which would otherwise be determined by officers. Any such request must be made in writing and must specify their reasons for making the request which must reasonably relate to some aspect of the site or the development (you should have regard to the provisions of paragraph 9.6 above to help you to formulate appropriate reasons in support of your request for referral to Committee). To be a valid request the Chair of the relevant committee or sub-committee must have confirmed that the ward member's reasons for making the request are acceptable. Requests should ideally be received before the earliest date for decision - i.e. three weeks after receipt of the application. However, requests received later than this will still be valid provided appropriate reasons are given in support of the request and the Chair is prepared to exercise his/her discretion to consider the late request.

11.11 Ward members who are also members of the committee (or substitutes) should remember that if, in your written request for referral of an application to committee, you express a strong opinion on the application which gives a clear impression that you have a closed mind as to the merits of the proposed development, you may well disqualify yourself from taking part in the decision.

Planning applications submitted by councillors and members of their families.

11.12 Planning applications that are submitted to the LPA by serving councillors, their close associates and relatives, can easily give rise to suspicions of impropriety. Nevertheless, it is perfectly legitimate for such applications to be submitted to the authority for determination. However, it is vital to ensure that these applications are handled in such a way that gives no grounds for accusations of bias or preferential treatment. Indeed, this should be the case with all applications.

11.13 The officer delegation scheme requires that all planning applications submitted by or on behalf of any elected member of the council (in their personal capacity) or any member of their family shall be referred to committee for decision.

11.14 A councillor who has submitted a planning application in their personal capacity will be considered to have a prejudicial interest in that application. You will also be considered to have a prejudicial interest in any application submitted by a member of your family or a

close associate. Accordingly, if you are a member of the planning committee (or sitting as a substitute), you should not take part in the decision making process relating to the application and must leave the room. You may, however, prior to leaving the room, take the opportunity to make a statement to the committee to explain and justify your proposal. As the applicant always addresses the committee last, you will have the opportunity to hear the planning officer's presentation and the representations of objectors and any other interested parties before making your statement and then leaving the room.

11.15 It is important to remember that councillors must not seek improperly to influence the decision on their application. Some councillors may therefore, in this situation, consider it unwise to make a statement to the committee and instead may prefer to rely on a third party or planning agent to make their case to the committee for them. However, councillors who do choose to make a statement to the committee personally should observe the same 3 minute time limit set out in the Public Speaking Protocol that applies to members of the public when addressing the committee.

11.16 This advice also applies to all councillors who are not members of the committee or acting as substitute but who choose to attend the committee at which their planning application (or that of their family member) is due to be determined.