

# **“Probity in Planning”**

## **Planning Committee Code of Practice**

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## **1.0 INTRODUCTION**

- 1.1 The conduct of both Officers and Members in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. The local administration of the planning system has come under close scrutiny. The Nolan Committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Members. In 2013 the Local Government Association provided updated guidance on "Probity in Planning" and the Localism Act 2011 has created a new Standard regime with a more local focus.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Members, Officers and members of the public in connection with the determination of planning applications and other applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework, by which these standards may be achieved, maintained and regulated by each local authority.
- 1.3 Clearly, one of the key purposes of the planning system is to control development in the public interest. When performing this role the Local Planning Authority and elected members are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. Clearly, there is a need to make decisions that are open, impartial and based on sound judgement and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been impartial, biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.4 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 1.5 The Terms of Reference for Planning Committee are set out in the Council's Constitution (<http://www.Torridge.gov.uk>) which specifies the matters that are to be delegated or to be considered by Planning Committee.

## **2.0 STATUS OF THE CODE**

- 2.1 This Code sets out the basis as to how Officers and Members should determine planning and other relevant applications submitted to the Council and ensures that their conduct accords with the Council's Codes of Conduct for Members and Officers which are contained within the Council's Constitution.
- 2.2 This Code is contained in the Council's Constitution. A breach of this Code, depending on the circumstances, does not usually amount to a breach of criminal law but may adversely affect the standing of Torridge District Council. It could result in a decision being judicially reviewed or allegation of a breach of the Code of Conduct or a complaint of maladministration made to the Local Government Ombudsman.

## **3.0 GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS**

- 3.1 Elected Members are guided by the Member's Code of Conduct, the seven principles of public life and the Localism Act 2011. This Code is further amplified by reference to the Council's constitution in respect of general Council procedures as well as further amplification in specific Codes of Conduct such as the advice contained in this Code.
- 3.2 Councillors and Officers have different but complementary roles with the determination of planning applications and it is important that an open, respectful and transparent relationship is developed based upon mutual trust and understanding of each other's positions. It is important for the overall standing of the Council and the achievement of national performance targets that they work as an effective team. The role of a Councillor when determining a planning application is to have an overriding duty to the whole community and, accordingly, in deciding the outcome of an application, to make a reasoned decision taking into account the provisions of the Development Plan and all relevant material considerations. All decisions should be taken in the interests of Torridge as a whole.
- 3.3 The basis of the planning system is that consideration is given to all development proposals and these are determined against the wider public interest. Much is often at stake in such decisions and in the process for local people and development interests, as well as for Torridge District Council itself. Given the nature of these decisions, opposing views are often held by those involved. Whilst these views must be taken into account in the determination of planning applications, as stated above, the Planning Committee must not favour any person, group or locality. Members must therefore take steps to ensure that in their discharge of their Planning Committee duties, the distinction between this role and their role as an individual Ward Member is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee, especially if they feel that they will often be placed in the position of wishing to represent constituents and

wishing to speak as a Ward Member rather than a Member of the Planning Committee (See paragraph 5.4).

- 3.4 In reaching a decision, Members should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.5 All decisions should be made in an open and transparent manner by the Members of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Members of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance, in an emergency, any notes should be passed to the Democratic Support Officer.
- 3.6 Members should always address the Planning Committee through the Chair and avoid speaking directly to one another since it is important that all matters being discussed are clearly heard and acknowledged by everyone at the meeting.
- 3.7 In order to ensure that decisions are taken on planning grounds and are sound, it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself. It is important also that Members are seen to be meeting this provision of the code.
- 3.8 The role of Officers is to advise Councillors and the Council as a whole and to carry out work as set out in the Local Plan, Strategic Plan and agreed Business Plans. Officers are employed by the Council, not by individual councillors, and it follows that instructions to them may only be given through the Head of Paid Service or the relevant service manager to give effect to decisions of full Council and Committees.
- 3.9 The conduct of Officers who advise on the determination of planning applications is contained generally in the Council's protocol for Member/Officer relations and is supplemented by guidance from their professional bodies, such as Royal Town Planning Institute, the Law Society, and the Institute of Legal Executives. Officers may not be instructed to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.

### 3.10 Members should abide by the following advice:

- Members should always pass a copy of any lobbying correspondence to the Planning Manager at the earliest opportunity;
- Members should never pressurise or lobby Officers for a particular recommendation;
- Members should promptly refer to the Planning Manager any offers made to them of planning gain or constraint of development;
- Members should inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches including inappropriate offers of gifts or hospitality (see also paragraph 3.12);
- Members should never use political group meetings to dictate how they should vote on a planning issue and should not lobby fellow Members regarding concerns or views, nor attempt to persuade other Members to vote in a particular way.

3.11 Officers are required to act impartially at all times in determining applications and providing advice at the Planning Committee. Officers will be expected to conduct themselves in all they say and do in a manner which totally preserves this position of impartiality.

3.12 During the determination of an application, it is possible that Officers and Members may be offered hospitality by an interested party. Even though this rarely occurs in Torridge District Council, it is important to recognise that, if at all possible, these offers should be politely declined. However, any Members receiving any gift or hospitality, in their capacity as Members, over the value of £25, should provide, within 28 days of receipt, written notification of the details to the Monitoring Officer of the Council for entry into the register of gifts and hospitality, which is open to public inspection and located in the Democratic Support Office. Similarly, for Officers, in the event that the receipt of hospitality is unavoidable, they must ensure that the hospitality is of a minimal level and declare receipt of hospitality (of any value) as soon as possible by completing an on-line "Hospitality Declaration Form" and submit this to the Monitoring Officer for signature.

## **4.0 DECLARATION AND REGISTRATION OF MEMBER AND OFFICER INTERESTS AND BIAS**

4.1 Members and Officers are required to give a general notice of interest that they hold, usually upon their election or appointment to office, and are under a duty to maintain that declaration and amend, as necessary, within 28 days of becoming aware of any such changes, throughout their term of office.

- 4.2 A register of Members' interests will be maintained by the Council's Monitoring Officer and is available for public inspection. A register of Planning Officers' interests will be maintained by the Planning Manager.
- 4.3 Furthermore, Members and Officers are under a duty to declare interests as and when matters arise at Planning Committee. Guidance on these issues may be sought from the Council's Monitoring Officer. The decision as to whether an interest ought to be declared rests with the individual Councillor or Officer involved.
- 4.4 Where any Member of the Council considers that they have a registerable, prejudicial, or disclosable pecuniary interest they should discuss this situation with the Monitoring Officer or his representative as soon as they realise this is the case. Further details on the requirements pertaining to interests are set out in the Member's Code of Conduct in Part 5 of this Constitution.
- 4.8 With regard to Planning Officer interests, the Planning Manager will check the Officer declarations list and advise the Officer accordingly if they feel that alternative arrangements are necessary in presenting the report.
- 4.9 Members should also not give grounds for a suspicion that any such interests may arise and have not been declared.
- 4.10 When an application is to be determined, there is an expectation that it will be dealt with transparently, openly and in a fair way. Members will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.

## **5.0 PREDETERMINATION OR PREDISPOSITION**

- 5.1 Members of the Planning Committee need to ensure that they do not fetter their ability to participate in the decision making process on an application by making up their mind or clearly indicating that they have made up their mind on how they will vote prior to the consideration of the application by the committee.
- 5.2 The Planning Committee should, when considering an application, take into account all views that are expressed in such a way that they are openly heard and fairly considered in a balanced way before the committee reach a decision.
- 5.3 Members of the Planning Committee can have a predisposition to an initial view, where the member is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.

- 5.4 The fettering of a members discretion as set out in 5.1 and then taking part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 5.5 The Localism Act 2011 now sets out that a member will **not** be taken to have had a closed mind when making a decision just because they have previously done or said anything to indicate their view in respect of the matter. However, it is important that a fair minded observer would think that the Member was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 5.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's expectation that a planning application will be processed and determined in an open and fair manner. To do this, Members taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should not commit themselves one way or another before hearing all the arguments.
- 5.7 A situation can arise when a Member of the Planning Committee represents a Ward within which a contentious application is lodged. If, prior to the matter being considered by the Planning Committee, that Member decides to make a public statement, and either strongly supports or opposes the application, it will be difficult for that Member to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Member should make an open declaration, in relation to his or her position and not vote on the determination of the application at Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Member will also be required to vacate their seat within the Planning Committee and to leave the room for the duration of the consideration of the item, other than for the purposes of exercising their right to speak as a Ward member, in accordance with the Ward Member speaking arrangements (see section 11).
- 5.8 Ultimately it is the responsibility of the individual member to ensure that their role on the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests, and the requirements of the Planning Committee. This can be especially important when the Councillor is "Dual Hatted" and as such the Councillor should declare this before discussing a proposal at Planning Committee.

## **6.0 DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS, OFFICERS AND THE COUNCIL**

- 6.1 In accordance with the Council's Officer Code of Conduct employees must declare any relevant financial or non-financial interests to the Monitoring Officer including membership of any organisation not open to the public without formal membership and commitments of allegiance. Such declarations will be maintained in documents which will not be publicly disclosable.
- 6.2 Such declarations can be made on a regular basis without any known future applications coming forward. In such situations, planning and other associated applications will not be allocated to that employee to deal with.
- 6.3 However, it will sometimes occur that an employee only identifies a conflict of interest in the course of determining an application. At this point it is the responsibility of the employee to immediately raise the declaration with the Planning Manager and for the employee to take no further action in the determination of the case. Again, a record of the declaration will be maintained in documents which will not be publicly disclosable.
- 6.4 In all instances where there is a conflict of interest, the appropriate procedure would be for Officers to notify the Planning Manager of that conflict and to have no further part in the determination of the application.
- 6.5 Any proposals submitted by Members and Officers shall be dealt with so as to give no grounds for accusations of favouritism. For this reason the Council's Scheme of Delegation specifies that any such proposal, when recommended for approval, should be determined by the Plans Committee rather than under officers delegated powers.
- 6.6 Officers and serving Councillor's must not act as agents for people pursuing Planning matters within Torridge District Council's jurisdiction.
- 6.7 Any application submitted by Torridge District Council shall be determined by the Planning Committee and processed in the same transparent and impartial manner as for any other applicant.

## **7.0 LOBBYING**

- 7.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications.
- 7.2 It is, however, important that Members protect their impartiality and integrity in planning matters. Planning Committee Members will not breach this Code by listening to or receiving viewpoints from residents or other interested parties provided that they make it clear that they are keeping an open mind. However expressing an intention to vote one way or another before a Planning Committee meeting would prejudice impartiality.

## **8.0 WARD MEMBER INVOLVEMENT IN PLANNING APPLICATIONS PROCESS**

- 8.1 Ward Members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward Members bring strong community leadership, extensive local knowledge and an up to date understanding of current issues. Planning Officers have to act impartially at all times, but will provide support and advice to Ward Members on planning matters in order for them to play this community leadership role. This will include the involvement of Ward Members in negotiations on planning obligations.
- 8.2 Planning obligations negotiated under Section 106 of the Town and Country Planning Act, 1990 must be seen to mitigate the effects of development whilst recognising that each must comply with council planning documents, policies and guidance.
- 8.3 To be lawful, a planning obligation must meet all of the following statutory tests. It must be:
- (a) necessary to make the development acceptable in planning terms;
  - (b) directly related to the development; and
  - (c) fairly and reasonably related in scale and kind to the development.
- (These apply to both future and existing Section 106 obligations and to CIL payments).

8.4 To this end, where the need for a planning obligation is anticipated by a Planning Officer, Ward Members will be consulted at an early stage of the pre-application and planning application process. The views of Ward Members on planning obligations will be sought electronically through their comments on weekly lists and shall be considered in any decision taken by the Planning Committee or by an officer acting under delegated authority. Any comments on Planning Obligations from Parish or Town Councils should be passed to the Planning Officer as part of their normal consultation response.

#### 8.5 **Information available to Ward Members**

The following information will be available to Ward Members via the Torridge District Council web-site in order to help inform their consideration of a development proposal at both pre-application and submission stages.

- A summary of existing Section 106 agreements within every ward.
- The planning policy framework to provide the policy context for the negotiation of planning obligations and it will be important for Ward Members to be familiar with this.

#### 8.6 **Ward Member Involvement at Pre-Application Stage**

Where a major development is proposed or the Ward Member has queried a specific pre application proposal, the Officer will contact the Ward Member and the developer to positively engage together in progressing the pre-application discussions and take account of key local issues at an early stage. On major developments where Pre-application Panel presentations are required, in line with the Pre-application Protocol, the local Ward Member will be invited to enable the developer to positively engage with Ward Members at an early stage in the development process, without compromising the decision making process. It is important to remember that these Pre application discussions are confidential.

8.7 The purpose of these Pre-application Panel presentations is to inform Ward Members and Planning Committee members of emerging proposals for major developments and enable key local issues of relevance to the development, including any Section 106 matters, to be identified. Such early engagement will enable the developer to understand and address any significant local concerns as early in the development process as possible including any priorities to mitigate the impact of the proposed development.

8.10 The developer's presentation will be limited to the facts of the development proposal.

8.11 Ward Members will be given the opportunity to ask questions concerning any aspect of the proposal, including Section 106 matters. Unless a matter is commercially confidential and sensitive, developers will be expected to provide comprehensive answers to questions from Ward Members.

8.12 The Planning Officer will highlight the key planning issues, summarising policy issues, and other issues for consideration. Key issues raised at the Pre app Panel meeting will be written up as part of the case file for that development.

- 8.13 Ward Members will be at liberty to express opinions in support or opposition for the proposals at the meeting but this should be fed into the formal response to the developer , unless they are also a member of the Planning Committee.
- 8.14 The Planning Officer will ensure that all attendees are aware of the Pre application Panel Protocol and make it clear that the Planning Committee Members are at the meeting to understand the issues and to ask questions of clarification, but will remain open minded so as to avoid any suggestions of pre-determination.
- 8.15 Local Ward Members involvement at pre-application stage will not affect the speaking rights of the member at Planning Committee provided the local Ward Member has followed the Council's Code of Good Practice for Members and Officers.
- 8.16 The advice given at the pre application stage does not necessarily bind the formal determination by the Council on any subsequent planning application.
- 8.17 Planning Committee Members are advised where they wish to meet with developers/landowners (or their advisors) this should be in the presence of a Planning Officer wherever possible. This is to ensure there is no prejudice on the integrity of any subsequent decisions made on any application. Members who are not on the Planning Committee are advised to seek advice from Planning Officers prior to agreeing to meet with developers or landowners.
- 8.18 **Ward Member Involvement at Planning Application Stage**  
Members should review the weekly list of planning applications and initiate contact with the case officer named in the weekly list if they wish to draw attention to any particular planning or Section 106 related issues or concerns.
- 8.19 Wherever necessary and requested, meetings will be arranged for all Members within the ward affected by the proposal. In order not to unduly delay the determination of planning applications Members are asked to prioritise attendance at any arranged meetings. Members can still make comments on a planning application within the statutory consultation period of 21 days.
- 8.20 The advice and discussions at any meeting will not necessarily bind the formal determination by the Council on the planning application.

## **9.0 ROLES OF MEMBERS AND OFFICERS AT PLANNING COMMITTEE**

9.1 Officers and Members have specific roles at Planning Committee. In particular the following Members and Officers will be identified at the Planning Committee:

- Chair of Planning Committee
- Vice Chair of Planning Committee
- Other Members of Planning Committee
- Planning Manager
- Development Management Team Leader
- Legal Officer
- Democratic Support Officer
- Planning Officer
- Other professional inputs (as determined by the Planning Manager)

## **10.0 CALL-IN PROCEDURE FOR PLANNING APPLICATIONS**

10.1 When a Ward Member or Planning Committee Member wishes to call-in a planning application to be considered by the Planning Committee they must fill in the relevant form within three weeks of the notification date and identify clear planning reasons why they wish the application to be refused or approved.

(Only Planning Committee Members have the option to request that the application is referred to the Planning Committee without specifying approval or refusal by ticking the Call-in box on the form)

10.2 The Planning Manager or DM Team Leader will assess whether the reasons given for the Call-in are valid planning reasons and if not the Planning Manager will instruct the relevant Planning Officer to advise the Member that the Call-in will not be accepted.

10.3 If the reasons for call-in are deemed not to be valid the Planning Manager can if necessary refer the call in to the Planning Committee Chair and Vice Chair to establish whether they feel the Planning Committee should review the application.

## **11.0 ORDER OF PLANNING COMMITTEE CONSIDERATIONS**

11.1 All decisions that are to be made by the Planning Committee will be based upon written reports by Officers supplemented, where necessary, by a brief oral presentation which may include a site plan, photographs of the site, key application plans and drawings, and other relevant material that the Officer considers will assist the Planning Committee in the consideration of the proposal.

- 11.2 In most cases the Planning Officer will make a recommendation to the Planning Committee to either refuse planning permission, with reasons, or to approve planning permission, with or without conditions. In exceptional circumstances the Planning Officer may not be in a position to make a recommendation to the Planning Committee through the main report. Where this is necessary reasons will be given as part of the Officer report and presentation to the Planning Committee. The Planning Officer may also need to report updates on specific aspects of a proposed development. In order to ensure efficient and effective decision making, the Planning Manager will generally seek from the Planning Committee, delegated authority to determine a planning application after the expiry of an advertisement period, or upon receipt of additional details, or will seek delegated authority to refuse permission where a Section 106 agreement linked to a resolution to grant consent is not, in his/her opinion, being expedited with sufficient speed by the applicant, or will seek to defer to the Planning Manager for further negotiations in consultation with Chair, Vice Chair of the Planning Committee, and the Lead Member for Planning.
- 11.3 In exceptional circumstances, an oral report may need to be provided at the Planning Committee meeting itself.
- 11.4 The order for consideration of all planning applications will be as follows:
1. Any Planning Committee Member(s) with a prejudicial interest must declare their interest and leave the room. However, if they wish to speak for or against a proposal they may remain in the room seated in the public gallery until it is their turn to speak. After speaking they will then leave the room before any deliberation commences.
  2. Planning Officer Oral Presentation;
  3. Any Parish or Town council who wish to speak for or against the proposal;
  4. Any Public Speaker who wishes to speak against the proposal (x2);
  5. Any Public Speaker who wishes to speak in favour of the proposal(x2);
  6. Any eligible Ward Member(s) who wish to speak for or against the proposal (no time limit);
  7. Questions to the Planning Officer by Planning Committee Members;
  8. Planning Committee Members debate and consider the proposal;
  9. Planning Committee Members move and debate any alternative motions to the recommendation. The Legal Officer clarifies the wording of any alternative motion and the Chair puts these to the vote as appropriate (refer also to section 14);
  10. Chair of Planning Committee puts the original recommendation to the vote, if necessary;
  11. Formal Decision of Planning Committee on the proposal.

## 12.0 SPEAKING AT PLANNING COMMITTEE

- 12.1 Once the Planning Committee agenda and accompanying papers are made available to the public five days prior to the Planning Committee meeting, anyone who wishes to speak must notify the Planning Support Team (details of which will be on the agenda papers) that they wish to speak, give details of the item upon which they wish to speak under Part 1 and whether they wish to speak as a supporter, objector, or Ward Member. Notification must be made in person by either telephone, fax, letter or e-mail and must be received by no later than 2 p.m. on the Tuesday before the Planning Committee meeting. An individual who wishes to speak at Planning Committee must register personally.
- 12.2 The Members who will be permitted to speak as Ward Members are normally only those Members whose ward boundary falls within the 'red line' of the planning application site. However, exceptionally other Members will be allowed to speak at the discretion of the Chair provided that they represent an adjacent ward to where the red line is located and in the Committee's opinion the development directly affects residents in that adjacent ward and any of those residents have submitted letters of representation within the statutory notice period. When such an exception is made the reason will be provided as part of the Planning Committee minutes. Other Members can speak at Planning Committee, but as an objector or supporter and provided they meet the other requirements in section 12.
- 12.3 The other participants allowed to publicly speak at the Planning Committee will be the applicant or agent and/or third party objectors and supporters or professional agents appointed by them to speak.
- 12.4 In all circumstances the maximum number of public speakers will be two objectors and two in support of the development proposal. If there are several persons wishing to speak (whether objectors or supporters) preference will be given to the first person who properly registers to speak. However the Democratic Support Officer will advise other people who wish to speak of the nominated speaker and, if that speaker is agreeable, then an alternative speaker can be put forward provided all the other criteria in section 12 is satisfied.
- 12.5 Speakers who have notified that they wish to speak need to attend the Planning Committee at least quarter of an hour before the start of the meeting and should register their details with the Democratic Support Officer. They will need to confirm their name, the application they are to speak on, and whether they are an objector or supporter of the proposal.
- 12.6 Speakers will be allowed to speak for up to a maximum of **three** minutes and there will be no further involvement of the speaker in the deliberations of the Planning

Committee. Speakers will NOT be given an opportunity to ask questions of the Members of the Planning Committee.

- 12.7 Speakers are not to provide any presentational material for the Planning Committee. Any presentational material that is produced by speakers will not be accepted and will be disregarded.
- 12.8 In the event an application is deferred, anyone wishing to speak at the subsequent Planning Committee meeting must register in the normal way and whether they are allowed to speak will be at the Discretion of the Chair of the Planning Committee. Any previous speaker will not be given preference over other eligible speakers.
- 12.9 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 12.10 Speakers are advised not to make slanderous statements or any other racially motivated, discriminatory or inflammatory remarks.
- 12.11 The Chair can suspend the right to public speaking in relation to an individual item or the whole Planning Committee if he/she considers it necessary to maintain order at the meeting.
- 12.12 The Chair can also require a speaker to cease speaking and leave the meeting if in the opinion of the Chair the speaker's statement falls within 12.9 or 12.10 above.
- 12.13 The Chair of Planning Committee at any time may adjourn the Planning Committee and ask for the public gallery to be cleared to maintain order at the meeting if there is any activity or behaviour which, in his/her opinion, is disrupting the proper consideration of a planning application and/or the conduct of the business of the Planning Committee.
- 12.14 The Chair of Planning Committee at any time may move that either a Member who behaves improperly should leave the meeting or that the meeting is adjourned for a specified period, in accordance with Part 4, Chp I of this Constitution. If seconded the motion will be voted on without discussion.

## **13.0 SITE VISITS**

- 13.1 Planning Committee Members will be expected to be familiar with the site and the issues surrounding the Officer recommendation when they arrive at a Planning Committee meeting.
- 13.2 If, prior to a Planning Committee meeting, a Member considers that additional illustrative material would assist the Planning Committee to visualise the impact of the proposed development (over and above the planning application drawings and plans and the material forming part of the Officer's presentation to the Planning Committee) they should advise the Case Officer at least three working days before the Planning Committee meeting clearly specifying what additional material is needed and why.
- 13.3 Officers will normally organise a site visit ahead of any formal recommendation if they feel this would benefit Members' understanding of the proposal. These site visits will be held prior to the Planning Committee meeting and Members will be expected to give priority to attending this at the arranged time. If Members wish the Planning Committee to visit other sites on the Planning Committee agenda not already included in the scheduled site visits they should advise the Development Management Team Leader at the earliest opportunity. If Members cannot attend the scheduled site visit they will still be expected to have familiarised themselves with the site. Members should, however, inform the planning officer if they intend to enter the owner's property unaccompanied as they will need the landowners consent to do this and should seek clarification from the Planning Officer as to whether it is appropriate for them to be accompanied by an Officer.
- 13.4 If a Member of Planning Committee moves a resolution for a site visit at a Planning Committee meeting not having attended the scheduled visit under paragraph 12.3 Planning Committee will exercise a strong presumption against agreeing to defer the planning application for a further site visit.
- 13.5 If during the course of the consideration of any application a Member moves a resolution for a site visit on a site which was not included in the scheduled site visit, the Member will need to give an explicit reason that must explain why the need for a site visit was not apparent prior to the Planning Committee meeting. In such cases the deferment for a site visit will need to be agreed by Planning Committee Members through a majority vote.
- 13.6 If a site visit is to be made by the Planning Committee it will consist of an inspection of the site (and adjoining sites and buildings as necessary) with the assistance of Officers. The purpose of the site visit is to assess the site and surroundings in the context of the development proposals under consideration, relevant development plan policies and proposals, and identified material considerations. It does not form part of the formal Planning Committee meeting.

- 13.7 Site visits conducted by the Planning Committee are private visits and will be unaccompanied (by third parties). As such there is no obligation on the Council to notify objectors or supporters of the arrangements for a site visit. Torridge District Council will contact the applicant and/or landowner of the site and/or adjacent sites to gain permission to access private property. Before Members enter the site(s) or building(s) the Chair will explain the procedure for the conduct of the visit. Officers will then explain to Members the issues relating to the Planning Committee item, pointing out any site related matters as necessary. It is important that Members view the site from all the locations suggested by the Officer as this will assist them in their determination of the application. Members are also encouraged to ask Officers any questions of fact.
- 13.8 During the site visit, Members and Officers should avoid comments that could be interpreted as deliberations on the proposal itself, restricting themselves to questions of clarification or observations of fact. If, in the opinion of the Chair of the Planning Committee, the conduct of Members, Officers or third parties is of such a nature as to be potentially in conflict with any of these requirements, or the safety of the Members or Officers is in question, he/she will immediately suspend the site visit. If the Chair of the Planning Committee does suspend a site visit the application will be determined by a subsequent Planning Committee without further recourse to a site visit (even if a further request is made by a Member).
- 13.9 Ward Members will be notified and may be present at a site visit but this is only to accompany the Planning Committee members, it is not an opportunity for the Ward Member to put forward any case for or against the proposal (adjacent Ward Members may also attend if affected by the development). The Ward Member is only present to assist with any clarification that may be required in connection with local area issues and to hear the explanation given by the Officer.
- 13.10 The purpose of Planning Committee site visits is:
- For Members of the Planning Committee to familiarise themselves with the site and its surroundings and the location of relevant parts of the proposal.
  - For Officer(s) to provide factual information to Members regarding the site and the proposed development.
  - For the applicant or their agent to be present on the site, either to enable access or to ensure health and safety procedures are followed.
  - At the Chair's discretion, to visit third party premises.
  - To seek clarification on details of the planning application from Officers, through the Chair.
- 13.11 All site visits will commence with the Chair of the Planning Committee making a statement to those in attendance regarding site visit procedures. The statement is as follows:
- “May I remind Members of the Planning Committee that the purpose of this site visit is solely to view the site and seek clarification on the planning application from Officers.

Planning Committee Members cannot engage in a debate or answer questions about the development.

## **14.0 DECISIONS CONTRARY TO THE DEVELOPMENT PLAN**

- 14.1 The general principle in planning is that where the Development Plan is up to date and relevant, planning applications should be determined in accordance with it unless material considerations indicate otherwise.
- 14.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004, Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011, the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG)
- 14.3 Councillors are encouraged to seek advice from Planning Officers, Development Management Team Leader or Planning Manager as early as possible in the Application Process if they have any queries. This will enable them to discuss what options there may be in terms of amending a scheme to address any concerns they may have .
- 14.4 Where the Planning Committee is minded to make a decision that is contrary to the Officers recommendation it may be necessary to defer a decision to gather further information, or to delegate authority to the Planning Manager to issue that decision following a period of further advertising, for example where the decision is a departure from the Local Plan.

## **15.0 DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

- 15.1 Department of Communities and Local Government Circular 03/09 advises that the most common cause for costs being awarded against a Local Planning Authority is where there are unsubstantiated reasons for refusal. However, the circular recognises that planning can often involve judgements concerning the character and appearance of a local area and the precise interpretation and application of development plan policy requirements. As such the circular states:

“Planning Authorities are not bound to accept the recommendations of their officers. However, if officers’ professional and technical advice is not followed, authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. If they fail to do so costs may be awarded against the authority”. (DCLG Circular 03/09, paragraph B20, April 2009).

- 15.2 Planning applications can also give rise to local controversy and sustained opposition, leading to Members being actively lobbied (see Section 7). However local opposition or

support for a proposal is not, in itself, a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons. Planning authorities will be at risk of costs for unsubstantiated reasons for refusal that rely almost exclusively on local opposition for their justification.

- 15.3 Once the Planning Committee agenda has been published, any Member may seek advice from Planning Officers, irrespective of the recommendation made on any particular planning application, and discuss what options there are with the Planning Manager or Development Management Team Leader.
- 15.4 If a decision is to be made contrary to the Planning Managers recommendation, then the Members proposing, seconding or supporting a contrary decision must agree the planning reasons leading to this decision and must also give Officers an opportunity to explain the implications of such decision prior to the vote. Clear reasons for the decision must be given prior to the vote and shall be minuted.
- 15.5 In the event that the Planning Committee is minded to grant an application contrary to Officers recommendation then they MUST provide:
  - (i) Full conditions and relevant informatives;
  - (ii) Full statement of reasons for approval or refusal (as defined in Town & Country Planning (General Development Procedure) (England) Order 2015);
  - (iii) Relevant Local Plan and Local Development Framework policies and proposals.
- 15.6 Where a Member of the Planning Committee moves a motion to refuse an application contrary to the Officers' recommendation then the Member moving the motion MUST provide:
  - (i) Full reasons for refusal, which must include a statement as to demonstrable harm caused and a list of the relevant plan and policies which the application is in conflict with;
  - (ii) Statement of other policies relevant to the decision.
- 15.7 In the event of a Member motion to refuse, which is seconded, the Chair will if necessary adjourn the meeting for a few minutes to allow Officers to advise of any other relevant planning issues to assist them with their reasons. Vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by an objective analysis, are more likely to result in a costs award.
- 15.8 If the Member moving the motion does not meet the requirements of (i) and (ii) above the motion shall be not be deemed to have been properly made.

15.9 If, in the opinion of the Planning Manager the possible decision of the Planning Committee to refuse planning permission would carry a high risk of an award of costs against the Council, she/he shall formally ask the Planning Committee to defer a decision and this advice will be formally minuted. The purpose of the deferral shall be to provide time for a full consideration by Officers of the Planning Committee's concerns about the application, such that Officers may advise of grounds of refusal, should the Planning Committee remain minded to refuse the application. In making an assessment about the level of risk of a cost award, the Planning Manager shall have regard to:

- The application's level of compliance with the Local Plan and other adopted policies;
- The robustness of the evidence that can be cited to support a refusal of planning permission;
- All other material considerations.

15.10 Any decision made during the Planning Committee forms the full and final decision of the Council (subject to agreed matters for deferral and final ratification) and it is therefore essential that both Members and Officers carefully follow the above procedure in order to provide a legally binding decision.

## **16.0 APPEALS AND INQUIRIES**

16.1 In the event that planning permission is refused either under delegated powers conferred on the Planning Manager or by the Planning Committee, an applicant may exercise his/her right of appeal. Officers are responsible for preparing the Council's evidence for these appeals, and the vast majority of these are dealt with by written representations involving an exchange of statements. On occasions specialist Counsel and consultant support is needed to supplement the evidence of Officers.

16.2 In the case of an applicant exercising his/her right to an Informal Hearing or a Public Inquiry Officers will be responsible for presenting the Council's evidence and attending to present that evidence. Members are at liberty to attend in their capacity as Ward Members and may be called to give evidence as a Ward Member. Members of the Planning Committee will not normally be required to attend to present the Council's case but may do so if they wish to.

16.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations that officer will not be able to deal with the appeal. However, Officers will normally prepare and present the evidence in their role as employee of the Local Planning Authority and the Planning Manager will identify the appropriate Officer or Planning Consultant to take responsibility for preparing and presenting the evidence.

- 16.4 It should not be necessary for Members of the Planning Committee to become involved in preparing and presenting the case at appeal on an overturn decision, because the reasons for refusal and statements on relevant policies put forward by the Members in reaching their decision should be sufficient to defend the case. However, there may be some situations where in an inquiry a Member involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Planning Manager considers this to be the case the Member will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.
- 16.5 In exceptional circumstances the Planning Manager may not be able to prepare the Council's evidence to the Hearing or Inquiry because the Officer's earlier recommendation on the grounds of refusal is so prejudiced by the earlier advice given. In these circumstances a nominated Member of the Planning Committee together with an externally appointed consultant will need to present the Council's evidence.
- 16.6 If externally appointed consultants or Counsel provide advice that the Council is at risk of costs being awarded or that the reason for refusal cannot be defended, the Planning Manager may refer the matter back to the Planning Committee before deciding whether to defend the decision of the Council. The Planning Manager will take into consideration the views of the Planning Committee before making a decision on how to proceed with the appeal. Information on this process will then be reported to the next Planning Committee under the "Urgent Matters" section of the agenda, with details of the decision taken added to the public online record of delegated decisions

## **17.0 QUALITY OF SERVICE**

- 17.1 The responsibility to provide a quality service is shared by both Officers and Members. Unnecessary delay at any point in the process of determining an application can result in customer commitments not being met and Government penalties through special measures provisions. It can also mean costly delays and can damage the reputation of Torridge District Council, the Planning Committee itself and its individual Members and Officers. This could have wider implications for the regeneration of Torridge in terms of how investors, and indeed local people, perceive the Council .
- 17.2 Therefore, when making decisions Members and Officers need to ensure primarily that a fair and reasonable planning decision is made, but that in so doing account must also be taken of customer commitments.

## **18.0 MONITORING AND REVIEW OF DECISIONS**

- 18.1 Members of the Planning Committee should also play an active part in regularly reviewing the outcome of planning decisions so that lessons can be learned and the

future consideration and determination of planning application proposals can be improved as part of a broader commitment to continuous improvement.

- 18.2 Every year the Planning Committee will undertake an Annual Site Visit to review completed projects and look at key regeneration sites that form part of the Local Plan. There may also be the need to review site visit procedures that take place during the determination stage of planning applications.
- 18.3 Planning Committee Members should assist in the preparation of the Local Plan by engaging in key consultation stages and discussing with Officers the application of key policies. The Chair of Planning Committee will also meet regularly with the relevant Lead Member to discuss the interrelationships between policy development and policy application.
- 18.4 Members should therefore ensure that they are available for review visits as and when necessary throughout the year and for a whole day of visits for the Annual Site Visit.

## **19.0 TRAINING**

- 19.1 No Member may sit at a Planning Committee meeting without first having received appropriate mandatory training as set out in paragraph 19.2. This training will expire if the Member has not sat on the Planning Committee within 12 months of receiving the training, or has had a gap of at least 6 months from the Planning Committee. Where the training has expired the Member may not sit on the Planning Committee until they have received the mandatory training.
- 19.2 Given the complex legislative framework for determining planning applications and the constant reforms and changes to procedure within the planning system, the Planning Manager will provide a Planning Committee Training Programme comprising regular sessions covering:
- An annual Planning Committee training session that will provide an overview of the key role of planning in the District and the role of Members in the planning process. This training will normally be held once the annual list of Planning Committee members are known and should be attended by both new and existing Members. Training will be undertaken by appropriate Legal and Planning Officers. If Members join Planning Committee after this training or act as a substitute for a Planning Committee Member, they will receive separate training.
  - Training Workshops on new Council and Central Government policy and legislation or other Planning issues that either Members request or Officers recommend.
  - Annual Site Visit.

- Planning Evidence Gathering (PEG) sessions for Planning Committee Members will be held one week after a Planning Committee meeting. These sessions will provide learning through feedback from both Officers and Members on decisions already made, to discuss any issues of procedure that may have been raised during the Planning Committee meeting and so that the Planning Manager and DM Team Leader can update the Planning Committee on the latest legislation changes. These sessions will not form any part of the formal Planning Committee meeting and therefore no minutes will be taken. It is important to note that these sessions will not be used to make or change any decisions and that there will be no discussion on developments that have yet to be determined other than to advise on expected dates for presentation to the Planning Committee.

19.3 The above training will usually be open to only Planning Committee Members to enable them to have a better understanding of planning issues in their role.

19.4 Members will be expected to make themselves available to attend these training sessions in order to keep up to date on the latest planning and development issues. It will be the responsibility of each individual Member to ensure that they have had at least the annual training in order to be able to sit at a Planning Committee meeting. The Democratic Services Team will maintain a register of Member training. Training will be provided using a range of training methods.

## **20.0 COMPLAINTS**

20.1 A complaint that a Member or Officer has breached this code should be made in writing to the Monitoring Officer for investigation and determination.

20.2 A complaint made in writing regarding the determination of a planning application or a related planning matter would be investigated by the Planning Manager and/or an appropriate officer of the Planning Department in accordance with the Council's complaints procedure.

20.3 A complaint may be made to the Local Government Ombudsman in the event that a complainant was not satisfied with the result of an investigation under the Council's complaints procedure. This must be made on the appropriate prescribed form and submitted direct to the Local Government Ombudsman.

**Jenny Wallace, Head of Paid Service**

**David Green, Planning Manager**

**Jamie Hollis, Senior Solicitor**

