

 Planning Committee 6 January 2010		Agenda Item No.
Title	Procedures & Guidance	
For further information about this report please contact	John Edwards Development Control Manager or Graham Leach Senior Committee Services Officer	
Service Area	Planning & Members' Services	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers		

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No

Officer/Councillor Approval		
With regard to officer approval all reports <i>must</i> be approved by the report author's relevant director, Finance, Legal Services and the relevant Portfolio Holder(s).		
Officer Approval	Date	Name
Relevant Director		Chris Elliott
Chief Executive		Bill Hunt
CMT		
Section 151 Officer		
Legal		Peter Oliver
Finance		Marcus Miskinis
Portfolio Holder(s)		Councillor Hammon
Consultation Undertaken		
The report is produced following the work of the Planning Committee working party which comprised of Councillors Mackay, Illingworth, Blacklock and Barrott.		
Final Decision?	No	
Suggested next steps (if not final decision please set out below)		
Aspects of the report will be a recommendation to Council.		

1. **SUMMARY**

- 1.1 This report brings revised procedures for the administration of the Planning Committee.

2. **RECOMMENDATION**

- 2.1 That Council removes the following documents from the constitution
- (i) the public speaking procedure rules at Planning Committee (while retaining a requirement within the Constitution for public speaking on Planning Applications and on TPO matters),
 - (ii) Planning Code of Conduct
 - (iii) Planning Site Visit procedure rules
- and notes the adoption of the local procedure by Planning Committee in the “Planning Committee a Guide” booklet,
- 2.2 That from the date Council removes the above from the Constitution the Committee adopts the local procedure in the form of “Planning Committee a Guide” booklet and delegates to the Monitoring Officer the power to amend the Committee membership and contact details within the booklet as required.
- 2.3 That Council amends the officer scheme of delegation P(18) bullet point 1 to read “Applications where a written request is received from a member of the Warwick District Council within 21 days of the notification of the application via the weekly list and by no later than the expiry date of the latest consultation period relating to the particular application.”

3. **REASONS FOR THE RECOMMENDATION**

- 3.1 The proposal places all the relevant procedural matters for Planning Committee into a single reference point document for all parties to access.
- 3.2 With regard to recommendation 2.3 at present the scheme of delegation reads Applications where a written request is received from a member of the Warwick District Council within the specified consultation period i.e. 21 days. That Committee referral is required. The Development Control Manager felt that this should be amended to read as set out above to provide clarity for both officers and Councillors.

4. **ALTERNATIVE OPTION CONSIDERED**

- 4.1 These documents could be left in the constitution. However, this is not recommended as it is more difficult for members of the public to access them, and more difficult for them to reflect speedily changes such as changes in committee membership

5. **BUDGETARY FRAMEWORK**

- 5.1 There are no budgetary implications of this report as it brings forwards amended procedures for the Committee

6. **POLICY FRAMEWORK**

- 6.1 The revised procedures are designed to bring forward proposals that will make the workings of the committee more transparent and defined.

7. **BACKGROUND**

- 7.1 Following the recommendation of an Assessment Sub-Committee following their consideration of an alleged breach of the code of conduct it was noted that there was direct conflict between the guidance booklet and the adopted procedures within the Constitution on the use of presentation material at Committee and it was asked for there to be a review.
- 7.2 At the same time as this review, officers thought it would be useful to bring forward a proposed single guidance booklet for Planning Committee for members of the public. It was felt this would be beneficial to consider this at the same time as work being undertaken by Members' Services on the review of the Constitution.
- 7.3 The review of the Council's Constitution which is currently in progress aims to enable Committees to develop procedures for their meetings to sit outside the Constitution which build upon the governance framework set within the Constitution.
- 7.4 In addition, the Planning Committee Procedure provides an updated job role of the Committee. The production of job roles for each Committee is recognised as good governance and is encouraged, by the Council's Standards Committee. To date a general job role for Councillors has been produced and agreed along with Job Roles for the Standards Committee and Regulatory Committee. In addition it is envisaged that all Committees will have an agreed Job Role in place by December 2010.
- 7.5 At the same time as the preparation of the updated booklet it was considered prudent to review and update the procedure for Planning Committee site visits and the Planning Code of Conduct. These were reviewed using the established Councillor working party as a consultative body by the Head of Legal Services.

Planning Committee - Procedure INTRODUCTION

The Warwick District Council's Planning Committee has adopted this procedure on the operation of the Committee which outlines the responsibilities of members of the committee and the officers' responsibility to the Committee.

This procedure is adopted by the Planning Committee under Council procedure 32 to enable the Committee to work efficiently and effectively in a manner that can be revised by the Committee itself rather than by Council through recommendation of the Committee.

This document sets out the detailed procedures of the Planning Committee that are not covered by the Council Procedure rules within the Constitution. The Members are bound by the Council's Constitution, Code of Conduct and Planning Code of Conduct (Appendix A to this document).

The Planning Committee consists of ten Councillors, drawn from each of the political groups, and from different parts of the District.

The over-riding duty of a Councillor on the Planning Committee is to the whole community, not to the people in their Ward and, taking into account the need to make decisions impartially, they will not favour, or appear to favour, any person, business, group or locality.

Councillors act as independent decision makers of the applications and issues before them and make planning decisions openly and impartially, with sound judgment and for justifiable reasons.

It should be noted that on average only 10 to 15% of planning applications, listed building consents or conservation area consent decisions are made by the Planning Committee and the reasons why applications will be considered by the Committee are set out below:

- Applications where a written request is received from a member of the Warwick District Council within 21 days of the notification of the application via the weekly list and by no later than the expiry date of the latest consultation period relating to the particular application;
- Applications where 5 or more written objections (or letters of support) or a petition (including one of support) with 5 or more signatures has been received, where the recommendation is contrary to the representations that have been made.
- Applications where the recommendation of the Head of Development i.e. Grant/Refuse is contrary to the representations made by a Parish/Town Council, i.e. Object/Support except in the following circumstances:-
 1. The Head of Development is satisfied that the plans have been amended to address the concerns of the Parish/Town Council, or
 2. Where the representations made by the Parish/Town Council raise issues which are not material to the planning assessment of the particular application, or
 3. Where the concerns of the Parish/Town Council have been previously considered as part of the assessment of an extant permission on the site and there has been no change in circumstances

- Application which would represent a material departure from any proposal within the Development Plan i.e. the Warwickshire Structure Plan and Warwick District Local Plan, or any approved Supplementary Planning Guidance.
- Applications known to be submitted by or on behalf of a Councillor, employee or former employee of the Council, or the spouse/partner of any such person.
- Applications submitted by Warwick District Council or Warwickshire County Council, other than for approval of routine minor developments.
- Applications which are to be subject to a S106 Agreement.
- Where applications are to be refused and enforcement action is being recommended.
- Applications where an Environmental Impact Assessment has been provided or requested.
- Any application which raises significant issues such that in the opinion of the Head of Planning, it would be prudent to refer the application to Planning Committee for decision.

In addition to determining planning applications the Committee also

- Decide if tree preservation orders should be confirmed if objections are received (although this is delegated to the Tree Preservation order Sub-Committee)
- Authorise the serving of planning and listed building enforcement and other notices
- Consider making revocation orders
- Decide to enter or vary legal agreements relating to planning matters
- Determine applications made by Warwick District Council
- Receive performance and monitoring reports with regard to the planning matters

PRIOR TO THE MEETING

How do I know the application I am interested in is going to Committee?

Between 10 and 20% of applications are determined by Committee. If an application is to be submitted to the Committee for consideration, you will be notified of this about a week before the meeting if you are the applicant or their agent, or have commented on the application. The notification letter will detail the officer's recommendation to Committee, either grant or refuse.

What happens if there is a site visit prior to the meeting and who decides to have them?

The procedure for a Planning Committee site visit is attached as appendix B to this procedure.

The Chair of the Committee has a briefing session with planning officers on each application due to be considered by Planning Committee. If both the Head of Planning and the Chair of the Committee agree that there has been significant public interest in the application and/or that it would be of a significant benefit to the Committee when determining the application, they can agree to hold a site visit.

The Planning Committee can also agree to defer the determination of an application to allow for a site visit to be held when they consider an application at a meeting.

If a site visit is to take place, the agent or applicant will be notified in writing approximately seven days before the site visit letting them know the time and date the Committee will visit the site. At site visits, only the Planning Committee, Planning Officers, ward councillor and agent/applicant will be permitted on site. No representations are allowed at a site visit.

Can I see a copy of the Committee agenda/officer's report to the Committee?

Copies of the agendas for the Planning Committee are published at least five clear working days before the meeting.

Copies can be obtained from Riverside House reception or by telephoning (01926) 412656. They are available for inspection at the Town Hall, Royal Leamington Spa and Warwickshire Direct offices. They can also be accessed via the Council's website, www.warwickdc.gov.uk/committees.

Can additional information be circulated after the agenda has been published?

No handouts are permitted at the meeting itself. Any additional written or photographic material should be forwarded to the Planning Department before 12 noon on the working day of the meeting.

This allows for the planning case officer to evaluate the content, if relevant to pass comment upon it, summarise it and circulate it to members at the meeting as part of their addendum.

How is the agenda organised?

There are usually three parts to an agenda:-

- (1) Part A - General - This is an administrative part covering declarations of Interest [see separate guidance note on the agenda] and, where appropriate, the confirmation of the minutes of the previous meeting(s)
- (2) Part B - Planning Applications - These are the reports of the Head of Development Services on planning applications. Each application is considered separately and will be accompanied by a screen presentation of the plans and photographs of the application site.
- (3) Part C - Other Matters - these include reports on tree preservation orders, enforcement action and statistics outlining the current performance of the Planning Department.

What happens after the publication of the agenda and prior to the meeting?

Councillors on the Committee will read the officers reports in the agenda and will have considered the main issues of the application but will not have prejudged the application prior to hearing the officer presentation, public speaking and the subsequent debate.

Councillors on the Committee will, if they have questions on an application, contact the relevant case officer to ensure clarification on the query can be provided at the meeting.

Planning Officers will have ensured that their reports provide a comprehensive assessment of the policy issues and material considerations relating to the case and will contain a recommendation. In addition, they will have notified all parties who may want to address the Committee about an application.

It is worth noting that any Warwick District Councillor can ask for a briefing on an application any time after it has been registered.

Are members of the public allowed to attend and/or speak at Planning Committee meetings?

All meetings of the Planning Committee are open to the public. Occasionally there may be items where members of the public will not be allowed to attend, however these will be clearly identified on the agenda.

In certain circumstances, members of the public have the right to speak at meetings of the Planning Committee during the consideration of applications for permission under the Town and Country Planning legislation (Part B of the agenda). There is also public speaking rights in respect of meetings of the Sub-Committees set up to consider Tree Preservation Orders.

The purpose of the right to speak scheme is to give members of the public an opportunity to make their views known directly to the Committee.

Who can speak at the Committee meeting?

Any member of the public can address the Planning Committee as long as it is on an item within Part B of the agenda and they follow the procedure set out in this document.

People wishing to speak will fall into five categories, these are:

- Parish/Town Council;
- Warwick District Towns Conservation Area Advisory Forum;
- Objector(s) to the application;
- Applicants/Supporters of the application; and
- Warwick District Councillor.

Parish/Town Council representative, Warwick District Towns Conservation Advisory Forum representative and Warwick District Councillors can all speak either in favour or objecting to the application, but must state which side they intend to speak for when registering.

To ensure equity, applicants and supporters of the application will only be allowed to address the Committee if somebody has registered to speak objecting to the application, except for cases where the recommendation is to refuse, where an objector to the application may only address the committee if somebody is registered to speak in support of the application.

Normally the Warwick District Councillor addressing the Committee would be one that represents the Ward the application is in. However on occasions it may not be possible and in this instance an alternative District Councillor can take their place.

If I comment on a proposal, do I have to speak at the Committee meeting?

No. Your comments are reported to the Committee anyway, and it is entirely at your discretion as to whether or not you speak at the Committee meeting. You may decide that because the Officer's recommendation is in line with your own views, there is little point in amplifying your comments: Please note, however, that the officer's recommendations are not always accepted by the Committee. Even if you do not wish to speak at the meeting you may still attend the meeting and listen to the Committee's debate. If you do wish to speak you will need to follow the procedure set out below.

If I want to speak how do I arrange it?

Members of the public can address the Planning Committee on any of the planning applications being put before the Committee in Part B of the Agenda. Anyone wishing to address the Committee regarding one of the proposed applications, needs to call 01926 412656, or email committee@warwickdc.gov.uk , anytime after the publication of the agenda but by no later than 12 noon on the working day before the day of the meeting.

The individual needs to provide details of:

The application they wish to speak on,

Which of the categories they fall in (if they are Town/Parish Council representative, CAAF representative or Ward Councillor they must state if they are objecting to or supporting the application)

Contact postal address

Contact telephone number

Contact email address

The registration will be acknowledged by Committee Services within 24 hours unless it is made at the weekend in which case it will be acknowledged the next working day. People wishing to speak are not registered until this acknowledgement has been sent.

On the day of the meeting speakers should arrive at the Town Hall between 5.15pm and 5.30pm to confirm attendance with the Committee Services Officer (who will be located on the first floor outside the Council Chamber). This is to allow for the procedure for the meeting to be explained and any last minute alterations to be notified to the Chairman of the Committee.

AT THE MEETING

How long will I be able to speak for?

There is a time limit of 3 minutes for each group of speakers excluding Warwick District Councillors who have up to 10 minutes at the discretion of the Chairman of the Committee. If there is more than one speaker in the same category for an item, the three minutes will be shared equally among them.

For example objectors to the application will normally be heard in equal amounts of time until the 3 minutes have expired. However, objectors to the application may get together and decide to make a joint case, appointing a representative, or vary the order of the speakers within the group if they wish.

Warwick District Councillors are permitted to address the Committee up to 10 minutes at the Chairman's discretion because they provide a key role in representing the local community.

Normally, when multiple applications are considered for the same site, these will be considered at the same time by the Committee. The Chairman will use their discretion on this matter and how long the public speakers will have on combined items, although normally this will be three minutes.

The planning officer at the meeting will present each application, summarising for the meeting the relevant features of the site, details of the development and the key issues that the Committee needs to consider as set out in the report. For these reasons the officer's presentation is not time limited.

The Chairman of the Committee may intervene, or vary the speakers, in the interests of efficiency of the meeting.

Can I use visual aids and or Circulate Information at the meeting?

No handouts are permitted at the meeting itself. Any additional written or photographic material should be forwarded to the Planning Department before 12 noon on the working day of the meeting.

This allows for the planning case officer to evaluate the content, if relevant pass comment upon it, summarise it and circulate it to members at the meeting as part of their addendum.

Is the meeting recorded?

All meetings of the Committee are recorded, both audio and visual, for good practice and kept for 12 months after the date of the meeting or longer if there are ongoing legal matters being considered with regard to the meeting.

The recordings will be retained by Committee Services and will be available for use in the following circumstances only; for relevant planning purposes at the discretion of the Head of Development in consultation with the Chairman of the Planning Committee; for use in the investigation of either a corporate complaint or allegation of a breach of code of conduct, by an officer authorised to conduct such enquires; or a data protection/ or freedom of information request.

What will be the order of items at the Committee meeting?

The applications will normally be considered in agenda order. However the agenda order may be amended by the Chairman prior to the meeting, to allow for items with public speakers to be considered at the beginning of the meeting.

The time taken to discuss each item is difficult to predict, and estimates of when each item is to be heard cannot be given.

How is each application considered at Committee?

Each application at Committee will be considered as follows:

1. A report will be included on the agenda for all parties to have read before the meeting;
2. The Chair will announce the item to be considered and if applicable highlight any further information relating to the application which has been received after the publication of the agenda;
3. The Planning Officer will make a presentation on each application. This will be a summary of main points only as full details will be incorporated in the written report. Powerpoint will be used for visual presentations of plans, drawings, layouts, elevations and other illustrative material which was not included in the report;
4. Recommendation from officer. All reports will have a recommendation. This will be clearly stated at end of the presentation;

5. This will be followed by any registered speakers in this order:
Parish/Town Council;
Warwick District Towns Conservation Area Advisory Forum;
Objector(s) to the application;
Applicants/Supporters of the application; and
Warwick District Councillor.
6. At the conclusion of the public speakers the Chair will invite questions of fact/clarification from members of the Committee to officers but no submission of views will be given at this stage. Officers will respond to queries with factual information;
7. When all information has been received the Members of the Committee will discuss the application. The discussion phase will be guided by the following principles:

Members of the Committee shall consider planning matters only. They will consider the relationship of the proposal to the Local, Regional and National planning policy framework, including all relevant site specific and general supplementary planning guidance and best practice guidance which will have been set out in the report. The impact of proposals on neighbours and the local community will be considered within the framework of planning guidance and local standards.

Members of the Committee must set aside their role as ward councillor and act as independent decision makers of the applications and issues before them, in the manner of a board of inquiry.

Decisions must be made on the totality of the relevant planning information before the Committee. The information will be derived from the report, the officer's presentation, any site visit and any relevant Planning considerations arising from public speakers at Committee. Members must consider carefully the degree of importance to be given to each relevant planning matter before concluding on the proposal

At the discretion of the Chairman, Officers will respond to additional requests for factual information or clarification which would facilitate members of the Committee in making their decision

During the course of debate, Members will look to avoid repetition and will endeavour to add new points to the discussion

Officers may also, at the discretion of the Chairman, put forward factual information where that may be necessary to ensure a decision is made in full possession of all relevant facts;

7. The Committee will then take a decision on the application. This will be made by a councillor making a proposal which will need to be seconded before it can be voted upon;
8. Once a proposal has been proposed and seconded the Chairman will make it clear upon which motion/amendment the vote is to be taken and ask for members to vote either in favour or against the application. (Votes will not be recorded unless specifically requested by the Committee); and

9. The Chair will state the decision of the Committee on the application following the vote.

What rules apply for linked planning and listed building applications?

The Committee usually considers linked planning and listed building applications or conservation area consents which are separately listed on the same agenda, as one item. The public speaking rules, detailed above, will therefore apply as if it were one item. That is, the 3 minute period will apply to representations concerning the grouped applications rather than there being a three minute period for each of the applications. However a separate vote will be taken on each application. The Chairman will ensure clarity by reading out the proposal before the Committee vote.

What happens if the Committee wish to make a decision contrary to the Officers' recommendation?

As the decision makers at Committee, Members have the authority to make a proposal which is contrary to the Officer's recommendation. Such a proposal must be accompanied by sound planning reasons. The Officers will assist Members in the wording of the reasons and will be invited to advise against any which they can demonstrate to be insubstantial. If the contrary proposal is passed, the wording of the reasons will be finalised by the Head of Development Services to give effect to the substantive reasons provided at the meeting itself.

If required, the press and public may be excluded to permit the giving of sensitive planning and legal advice.

What happens if the Committee wish to add additional and/or amend conditions already proposed by the planning officer?

If the Committee consider it appropriate to add a further condition to a recommendation for approval or vary a condition that is set out in the report, they may do so, provided that the opportunity is provided to officers to make any comment on the implications and appropriateness of such a condition or amendment.

What happens if the Committee defer the application either for further information or a site visit?

If the Committee agree to defer the application for a site visit, the agent or applicant will be notified in writing approximately seven days before the site visit letting them know the time and date the Committee will visit the site. At site visits, only the Planning Committee, Planning Officers and agent/applicant will be permitted on site.

If you wish to see a copy of the site visit procedure it can be sent to you on request.

If the Committee defer the application for further information, the Planning Officers will try to get the necessary information in time for the item to be considered at the next meeting of the Committee.

If items are deferred to another meeting, those speakers who wish to speak when the application returns to Committee will need to re register to speak in accordance with the procedure stated previously in this leaflet.

AFTER THE MEETING

When are Decision Notices issued?

The Planning Department aim to issue the decision notices to the applicant within a few days of the Committee meeting.

When are the Committee minutes available for members of the public?

The minutes are normally produced and approved by the Lead Planning Officer and Committee Chairman in a draft format within 10 working days of the end of the meeting. They will be available via the Council's website and on request via telephone or writing from Members' Services.

Normally a basic summary of decisions of the Committee will published by Committee Service on the District Council website on the day after the meeting

USEFUL INFORMATION

When & Where do the Committee meet?

The Committee meets approximately once every three weeks. The meetings start at 6.00pm at the Town Hall, Royal Leamington Spa. The meeting dates are set the January before the start of the Council municipal year which starts in May.

All meetings are open to the public, except when there are confidential or exempt items which need to be considered in private. The reasons for this will be stated on the agenda and reiterated at the meeting.

If there are a significant number of planning applications to be considered by the Committee, it may not be possible to consider them all in one night. If this is the case, some applications may be adjourned for consideration until the reserve night of the Committee, which is normally the following evening.

Does public speaking alter the procedures for publicity of planning applications?

No. Planning applications will continue to be publicised in the normal way. If you do wish to comment on a proposal, you should write to the Head of Development Services to give your views or send an email to the address given on the neighbour letter or site notice. Letters will not be formally acknowledged but your views will be taken into account in assessing the proposed development. Please note that the Head of Development Services is able to determine certain applications under powers delegated to him by the Council. If the application goes to Committee, a summary of any comments received is reported to the Committee.

I am registered to speak but can no longer attend the meeting?

If this were to happen you can appoint someone else to speak on your behalf as long as you submit details of the person (including telephone number) before the meeting. By either contacting the Committee Services Officer before 4.30pm on the day of the meeting by telephone (01926 412656) or email committee@warwickdc.gov.uk or by your substitute speaking to the Committee Services Officer at the Town Hall between 5.15 and 5.30pm on the day of the meeting.

How can I obtain copies of agendas?

Copies of the agendas for the Planning Committee are published at least five clear working days before the meeting.

Copies can be obtained from Riverside House reception or by telephoning (01926) 412656. They are available for inspection at the Town Hall, Royal Leamington Spa and Warwickshire Direct offices. They can also be accessed via the Council's website, www.warwickdc.gov.uk/committees

Who do I ask if I have any other queries?

If you wish to find out about progress on a particular application you should phone our Customer Service Centre on (01926) 412717. Our website also contains information to enable you to track progress of a particular application. For general enquiries about the public speaking procedure, please phone (01926) 412717.

Do you have any tips for addressing the Committee?

The Council recognises that it can be a daunting task to address a public meeting.

It will help you if you prepare what you are going to say before you come to the meeting, then practice saying it and time it, be concise and focus on your key points. You do not have to fill the 3 minutes but this is the maximum time you will have if you are the only person speaking within your group. If there are other people speaking in your group, the three minutes will be divided equally among you.

An officer from Members' Services will be available between 5.15 and 5.30pm before the meeting to give you advice on procedures.

Do not forget that the laws of slander are very strict. If you say something, in public, about a person which is not true, even if you believe it to be true, you may be at risk of legal action. You should think carefully about any criticisms you make about people when public speaking.

What are the relevant issues in considering the proposals?

The relevant issues will vary with the nature of the proposal and the site, but may include the following:

- Regional Spatial Strategy, Structure Plan and Local Plan;
- Government guidance and Regulation;
- Case Law and previous decisions;
- Highway safety and traffic;
- Noise disturbance and smells;
- Design, appearance and layout;
- Impact on trees and the environment; and
- Residential amenity, such as impact on light, outlook and privacy.

What issues are not relevant in reaching planning decisions?

Again, these will vary from case to case, but the following are usually not relevant:

- Matters covered by other laws (e.g. alcohol licence);
- Private property rights (e.g. boundary or access disputes or covenants);
- The developer's morals or motives;
- Possible future development;
- Loss of view over other people's land; and
- Effect on value of the property.

WARWICK DISTRICT COUNCIL

**CODE OF GOOD PRACTICE
FOR MEMBERS DEALING WITH
PLANNING APPLICATIONS**

1. Introduction

- 1.1 Over recent years, planning has been moving to the heart of local authorities place-shaping and community planning roles. Councillors are encouraged to act as champions of their local communities. Guidance is required to assist councillors in the development of their community engagement roles whilst at the same time fulfilling the statutory role of determining planning applications as members of the Planning Committee.
- 1.2 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the decisions. It is important, therefore, that the process is characterised by open and transparent decision making. The process should leave no grounds for suggesting that a decision has been partial, biased or not well-founded in any way

2. The general role and conduct of councillors and officers

- 2.1 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. It follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Officers may also take decisions under powers delegated to them by the council. A successful relationship between councillors and officers can only be based on mutual trust and understanding of each others positions. This relationship and the trust which underpins it must never be abused or compromised.
- 2.2 Both councillors and officers are guided by codes of conduct. The code of conduct for members provides standards and guidance for members. Professional staff will be guided by or subject to codes of professional conduct by their professional body (e.g. the RTPI or the Law Society) and may be subject to disciplinary action by that body. A national employees' code of conduct is also in the course of preparation.
- 2.3 The code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, as well as appropriate relationships with other members, officers and the public. This impacts on the way in which councillors participate in the planning process. Of particular relevance to councillors making decisions on planning applications is paragraph 6(a) which states that a member

“must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or

secure for himself or herself or any other person, an advantage or disadvantage”

- 2.4 Councillors should also be very cautious about accepting gifts and hospitality. The code requires any member who receives, in his or her capacity as a member, any gift or hospitality over the value of £25 to notify the Monitoring Officer within 28 days of its receipt. It will then be recorded in the register of gifts and hospitality, which is open to inspection by the public. Similar rules apply to officers.

3 Registration and declaration of interests: predetermination, predisposition and bias

- 3.1 The code places requirements on members to register and declare interests. There are consequences for the member’s participation in the consideration of an issue in the light of those interests. Guidance can be sought from the Standards Board guidance on the code¹, or from the Monitoring Officer or the legal officer present at a meeting. Ultimately, however, responsibility for fulfilling the requirements of the code rests individually with each councillor.
- 3.2 An interest can be either personal, or personal and prejudicial. These are defined in the code. A prejudicial interest would require a councillor to withdraw from a meeting of the committee. However, the code contains an exception, which enables a councillor with a prejudicial interest to attend a meeting for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Once the councillor has finished speaking, he or she is required to withdraw from the meeting. This is to ensure that members of the committee do not, by their presence, influence or seek to influence, the other members of the committee.
- 3.3 A personal interest will not require withdrawal. Where a member considers (if necessary after seeking advice) that he or she has a personal interest in a matter, it must always be declared, along with the nature of the interest. Having declared the interest, the member is permitted to take part in the discussion and the voting.
- 3.4 In addition to declaring any personal or prejudicial interests, members need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. Avoidance of bias or pre-determination is a principle of natural justice which the courts expect a decision maker to follow. Again advice is available from the Monitoring officer or a legal officer, or on the Standards Board web-site².
- 3.5 Nevertheless, councillors will often form an initial impression or view. The courts draw a distinction between a member of the planning committee having clearly expressed an intention before a meeting to vote in a particular way (predetermination), and a member having expressed an initial view but making it clear that he or she is willing to listen to all material considerations presented to the committee before deciding how to vote (predisposition).

¹ Available at <http://www.standardsforengland.gov.uk/Guidance/TheCodeofConduct/Guidance/>

²

4 Lobbying of and by councillors, and predetermination

- 4.1 There will be occasions when a member of the planning committee is lobbied by friends, constituents or developers for or against a particular development application. It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. In these situations, there is very real risk of predetermination, and the councillor who wishes to avoid it must act very carefully.
- 4.2 Unless the member decides that he or she wishes to take up the case for a particular party or cause, and thereby debar him or herself from taking part in consideration of the application, care and common sense needs to be exercised. When being lobbied, councillors should take care about expressing an opinion that may be taken as indicating that they have already made up their mind on the issue, at a time when they will not have heard all the evidence and arguments. In such situations, it is advisable for councillors on planning committee to restrict themselves to giving procedural advice. This might include advising on speaking or writing to the relevant planning officer, to ensure that the individual's point of view is included in the report. A constituent who wishes to have someone speak for him at committee should be referred to another ward member who is not on planning committee, or if that is not possible, to a member of an immediately neighbouring ward.
- 4.3 Where a member wishes to promote or oppose a particular planning application, he or she will need to consider whether or not this has become a personal (and prejudicial) interest. He or she will also need to consider if their view is likely to be regarded as pre-determined, and thus against the fair determination of the planning application. If it is, the member may address the committee on behalf of his constituents (having declared his predetermined position) but should then play no part in the determination of the application. Although it is not a strict legal requirement for a member to leave the meeting in these circumstances, it would be good practice to do so, in order to demonstrate that he or she is not taking any part in the decision making process
- 4.4 A member may also request that an application is referred to the Planning Committee for determination rather than being determined by an officer under delegated powers. Such a request must be made in writing to the Head of Development Services within 21 days of notification of the application via the weekly list and by no later than the expiry of the latest consultation period relating to the particular application, and must give reasons for the request. Where such a request is made, the member will normally be expected to attend the Planning Committee meeting to amplify his or her reasons for 'calling in' the application.
- 4.5 Given that no decision on a planning application can be taken before the planning committee meeting, when all available information is to hand and has been duly considered, no political group meeting should be used to decide how councillors should vote on any application. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration.

5 Development proposals submitted by councillors and officers; and council development

- 5.1 Applications from two particular sources can easily give rise to suspicions of impropriety. Such applications must therefore be dealt with in such a way that gives no grounds for accusations of favouritism.
- 5.2 The first of these concerns proposals to their own authority by serving and former councillors or officers and their spouses or partners. All such applications will therefore be considered by the Planning Committee, and not by officers under delegated powers. Any member or officer involved in the submission of any application, whether on his or her own behalf or on behalf of another person, should play no part in the processing or determination of the application. The consideration of a proposal from a councillor in such circumstances amounts to a prejudicial interest for that councillor under the Code, and as such, the councillor will be required to withdraw from the room during consideration of the matter. Other members will naturally know the member who has submitted the application, but they are unlikely to have a prejudicial interest debarring them from participating in the decision making unless they are related to the applicant or have a close relationship with him or her beyond normal council working relationships. Whilst a member with a prejudicial interest has the same right as any member of the public to address the committee, the member should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the councillor with the Planning Committee.
- 5.3 Unless and until other requirements are put in place by an employee code of conduct, any officer involved in the submission of an application should notify the Monitoring Officer and the Head of Development Services of that interest, and should take no part in the processing or consideration of the application.
- 5.4 Any member who has a connection with a developer operating in the WDC area, or who is regularly involved in the submission of planning applications (e.g. as a result of his employment) should not seek to sit on the Planning Committee, as it is likely that he or she would have a prejudicial interest (either because of his involvement in the applications or because applications involve business competitors) and would therefore have to absent him/herself on a regular basis.
- 5.5 The other kind of application which may give rise to concerns relates to proposals for the council's own development or development on council owned land. These should be treated with the same transparency and impartiality as those of private developers. All such applications, other than for "routine minor developments", will be referred to the Planning Committee for determination.
- 5.6 A member whose Executive responsibility effectively makes him an advocate for the council development in question almost represents the 'internal applicant', and may well have a pre-determined position. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant application (and should consider leaving the room – see paragraph 4.3 above).

6. Pre-application discussions

- 6.1 A protocol has been prepared on pre-application discussions with developers for major applications. This can be obtained from Development Services or Member Services, and is available on the council's web site at www.warwickdc.gov.uk/committee.
- 6.2 It is important that any member who is likely to be involved at a later date in determining the application through Planning Committee should not give any appearance of having pre-determined the application (see section 4 above). In any discussions with developers before an application is determined, such members should limit their involvement to asking questions for the purpose of clarification, or raising issues of concern to them (or their constituents) to give the developer an opportunity to address those concerns before submitting the application. Members should be careful not to express any opinion on the application at this stage.

7. Site visits

- 7.1 A procedure for site visits is contained within the Planning Committee's procedural guidance. This can be obtained from Development Services or Members' Services, and is available on the council's web site at www.warwickdc.gov.uk/committee.

8. Decisions contrary to officer recommendation

- 8.1 The Planning Committee is the decision maker for those applications which come before it. However, all reports for consideration by the committee will have an officer recommendation. That recommendation will be based on the Development Plan (the law requires that decisions should be made in accordance with the development plan unless material considerations indicate otherwise³), all other material considerations, and the case officer's professional view.
- 8.2 If the Planning Committee is to take a decision contrary to the officer's recommendation, it must have sound and clear-cut planning reasons for doing so. Such reasons should be recorded in the minutes and on the application file. Where the committee grants permission contrary to an officer's recommendation to reject the application, the committee will also need to consider and formulate any conditions which are to be imposed.
- 8.3 A member of the committee who proposes a motion that the decision be taken contrary to the officer's recommendation should therefore be prepared to put forward such reasons at the time of making the proposal. It is important that the reasons are put forward (and if necessary clarified) before the vote is taken as the reasons for the decision are an integral part of that decision. It is important that the reasons and the decision observe the 'Wednesbury principle'⁴ – i.e. that all relevant information (in planning terms, the material considerations) is taken into account and all irrelevant information (non-material matters) is ignored. Whilst officers will advise the committee whether they consider that the reasons put forward meet these requirements, it is not in these circumstances the officers' responsibility to formulate reasons for members.

³ Planning and Compensation Act 2004, s. 38(6)

⁴ Set out in the 1948 case of *Associated Provincial Picture Houses v. Wednesbury Corporation*

Site Visit Procedure

PURPOSE OF SITE INSPECTION

The purpose of a site inspection is to provide members of the Planning Committee with the opportunity to familiarise themselves with the relevant features of a site and its surroundings.

FORM OF SITE INSPECTION

A site inspection is not a formal meeting of the Planning Committee. It is an informal arrangement to provide members with information to enable a decision to be made at a subsequent Planning Committee in the light of all relevant information available.

ATTENDANCE AT SITE INSPECTIONS

Officers will obtain the agreement of the applicant/landowner, normally via the agent, for a site inspection to take place on their land, where access is required.

Members of the Planning Committee will be present and relevant Officers of the District Council will attend.

The ward councillors for the ward in which the application site is located will also be informed of the inspection and can attend as an observer if they so wish. If a ward councillor is unable to attend, then they may request a parish/town council representative to attend on their behalf as an observer.

The applicant or their agent will be invited to attend the site visit and this will only be to answer questions where members require clarification.

Objectors/supporters/amenity group representatives will not be invited to site inspections.

Site inspection arrangements will be confirmed in writing, normally via email, to applicants/agents, Planning Committee members and relevant ward councillors.

PROCEDURE ON SITE

The following procedural rules will be observed in the holding of all site inspections:-

- (a) The Chairman will control proceedings throughout.
- (b) The Chairman will explain that the purpose of the site inspection is to obtain information relevant to the determination of the application. They will summarise the proceedings and constraints as set out below.
- (c) The Chairman will introduce the representative of the Planning Department who will describe the proposal with reference to features on the ground and the submitted plans and summarise the relevant issues and material considerations.
- (d) Other Officers may be present to provide other relevant specialist information where required e.g. Highways and Environmental Health.

- (e) The Officers will provide clarification on matters relating to the proposal in response to questions from elected Members. The applicant/agent may be asked by the Chairman to provide clarification on any details that are unclear.
- (f) During the site inspection, no separate discussions must take place between Officers or Members and applicants.
- (g) No hospitality will be accepted from the applicant or any other party present at the site inspection.
- (h) Members may visit an adjoining site to view the impact of the development on an affected property, where a prior request has been made for such a visit and members consider it essential to make such a visit in order to properly determine the application. Such a visit will be subject to all the other provisions set out in this procedure. Requests to visit adjoining affected properties made on the day of the site visit will be at the discretion of the Chairman.
- (i) The Chairman will conclude the site inspection. No indication of the views of Members or the likely outcome of the Planning Committee deliberations on the application will be given. If Members require further information or clarification of any aspect of the development, the Officer attending will be asked to ensure that such information is available by the time of the subsequent Planning Committee meeting.

SITE VISITS BY LONE COUNCILLORS

It is not always possible for all members of the Committee to attend the formal site visit and they may visit the site on their own. However, if this is the case they can only view the site from the public highway or other publicly accessible land and must not discuss the application in any form with anyone at the site.