

PROBITY IN PLANNING

Planning Committee Code of Practice



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1.0 INTRODUCTION

- 1.1 The conduct of both Officers and Councillors 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, supplemented by advice in the National Planning Policy Guidance on how the conduct of Councillors is regulated.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Councillors, Officers and Councillors 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 Councillors 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 partial, 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 Councillors 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 is set out in the Council's Constitution (<https://www.plymouth.gov.uk/aboutcouncil/councilconstitution>) which specifies the matters that are delegated 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 Councillors should determine planning and other relevant applications submitted to the Council and ensures that conduct accords with the Council's Codes of Conduct for Members and Officers which is 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 the City 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 Councillors are guided by the Council'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 Plymouth 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 the City of Plymouth 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. Councillors 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 Councillor is constantly made clear. If Councillors wish to act in the latter capacity they must make that clear at the outset. Councillors 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 Councillor rather than a Member of the Planning Committee (See paragraph 5.4).

- 3.4 In reaching a decision Councillors 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 Councillors of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Councillors 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 Councillors 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 Councillors 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 (through the Cabinet and relevant Portfolio Holders) and to carry out work as set out in the Corporate 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 a decision of the Council, the Cabinet, the relevant Portfolio Holders, or the Planning Committee.
- 3.9 The conduct of Officers who advise on the determination of planning applications is contained generally in the Council's protocol for Councillor/employee 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 by any Councillor to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.
- 3.10 Councillors should abide by the following advice:
 - Councillors should always pass a copy of any lobbying correspondence to the Service Director for Strategic Planning and Infrastructure or representative at the earliest opportunity;
 - Councillors should never pressurise or lobby Officers for a particular recommendation;
 - Councillors should promptly refer to the Service Director for Strategic Planning and Infrastructure any offers made to them of planning gain or constraint of development;

- Councillors 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);
- Councillors should never use political group meetings to dictate how they should vote on a planning issue and should not lobby fellow Councillors regarding concerns or views, nor attempt to persuade other Councillors 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 Councillors may be offered hospitality by an interested party. Even though this rarely occurs in Plymouth, it is important to recognise that, if at all possible, these offers should be politely declined. However, any Councillors receiving any gift or hospitality, in their capacity as Councillors, 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 its receipt as soon as possible by completing a "Hospitality Declaration Form" and submit this to the Service Director for Strategic Planning and Infrastructure for signature.

4.0 DECLARATION AND REGISTRATION OF COUNCILLOR AND OFFICER INTERESTS AND BIAS

4.1 Councillors 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 Councillors' 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 Service Director for Strategic Planning and Infrastructure.

4.3 Furthermore, Councillors and Officers are under a duty to declare interests as and when matters arise at Planning Committee. Guidance on these issues may be sought by 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 There are two types of interest, 'a disclosable pecuniary interest and private.

4.5 With regard to Planning Officer interests the Service Director for Strategic Planning and Infrastructure Services will check the Officer declarations list and advise the Officer accordingly if they feel that alternative arrangements are necessary in presenting the report.

4.6 What is a Disclosable Pecuniary Interest (DPI)

Disclosable pecuniary interests are defined in regulations. The regulations in general will mean that a member will have to register any interest they or their husband or wife or civil partner or cohabitee has in:

- any employment, office, trade, profession or vocation that they carry on for profit or gain or that their spouse civil partner or cohabitee carries on for profit or gain;
- any sponsorship that the Councillor receives including contributions to the Councillor's expenses as a Councillor; or the Councillor's election expenses from a Trade Union.
- any land licence or tenancy they have in Plymouth or that their spouse civil partner or cohabitee has
- any current contracts leases or tenancies between the council and them, or between the council and their spouse civil partner or cohabitee;
- any current contracts leases or tenancies between the council and any organisation with land in Plymouth in which they are a partner, a paid director, or have a relevant interest in its shares and securities;
- any current contracts leases or tenancies between the Councillor's spouse civil partner or cohabitee and any organisation with land in Plymouth in which he or she is a partner, a paid director, or has a relevant interest in its shares and securities;
- any organisation which has land or a place of business in Plymouth and in which they have a relevant interest in its shares or its securities.
- any organisation which has land or a place of business in Plymouth and in which the Councillors spouse, civil partner or cohabitee has a relevant interest in it shares or its securities;

4.7 What to do if you have a DPI

If a Councillor has a disclosable pecuniary interest (whether a Planning Committee Member or a Councillor speaking on an item as a Ward Councillor) they must declare that they have an interest at the start of the meeting and leave the meeting when the application is due to be considered as they cannot participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.

4.8 What is a Private Interest

The public is likely to consider that a Councillor has a private interest if it affects the wellbeing or financial position of:

- his/her family and close associates, or
- any organisation where he or she is a Councillor, or where he or she is involved in its management;
- any organisation to which he or she has been appointed by the council.

4.9 What to do if you have a Private Interest – Financial

If a Councillor has a private they must declare the interest if the decision could confer a financial advantage or disadvantage on:

- his or her family , or
- his or her close associates, or
- an organisation where he or she is a Councillor, or is involved in its management (whether or not appointed to that body by the council). This would include membership of a secret society and other similar organisations

4.10 What to do if you have a Private Interest - Other issues

When the committee is determining an application in which the Councillor has a private interest a councillor should declare the interest if the decision relates to an approval, consent, licence, permission, or registration for:

- his or her family, or
- his or her close associates, or
- an organisation where he or she is a Councillor or is involved in its management (whether or not appointed to that body by the council). This would include membership of a secret society and any other similar organisations.

4.11 A Councillor should declare an interest at the start of the meeting, or when they realise they the interest if that is later. They can stay in the meeting and speak and vote unless their private interest is also a disclosable pecuniary interest.

4.12 If a decision being taken at the committee is likely to confer an advantage or disadvantage on:

- a Councillor's family;
- his or her close associates; or
- an organization where he or she has a private interest more than it will affect other people living or working in the area the councilor should discuss the matter with the Monitoring Officer, or his/her designee in advance of the meeting as legal issues of bias may arise.

4.13 Councillors should also not give grounds for a suspicion that any such interests may arise and have not been declared.

4.14 When an application is to be determined, there is an expectation that it will be dealt with transparently, openly and in a fair way. Councillors 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.

4.15 An alternative approach may be for the Planning Committee Member to refrain from making any public statement on an application and to invite another Ward Councillor to attend the Planning Committee to speak on the local ward issues and for the Member of the Planning

Committee, if she/he has not made a public statement in support of or against the application, to confine his/her comments to the relevant planning issues, taking into account the interests of the City as a whole.

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 Councillor 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 Councillors 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 Councillor, who has expressed a preference for a particular outcome of an application as it proceeds to determination, will **not** be taken to have had a closed mind when making the 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 Councillor 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 (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Councillors taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should avoid committing 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 Councillor decides to make a public statement, and either supports or opposes the application, it will be difficult for that Councillor to be seen to subsequently

determine the application transparently, openly and fairly. Accordingly, the Councillor 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 Councillor will also be required to vacate their seat within the Planning Committee and to sit within the public gallery for the duration of the consideration of the item, and where they have exercised their right to speak as a Ward Councillor, they can address the Planning Committee at the appropriate time in accordance with the Ward Councillor speaking arrangements (see section 11).

- 5.8 Ultimately it is the responsibility of the individual Councillor 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.

6.0 DEVELOPMENT PROPOSALS SUBMITTED BY COUNCILLORS, OFFICERS AND THE COUNCIL

- 6.1 In accordance with the Council's Officer Code of Conduct (June 2000), employees must declare any financial or non-financial interests which relate to their work to the appropriate Director, Service Director, or Head of Service, 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 Director, Service Director, or Head of Service 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 Director, Service Director, or Head of Service of that conflict and to have no further part in the determination of the application.
- 6.5 Any proposals submitted by Councillors and Officers shall be dealt with so as to give no grounds for accusations of favouritism. For this reason reference is made in the Terms of Reference for Planning Committee for decision making involving Council employees or Councillors.
- 6.6 Officers and serving Councillors must not act as agents for people pursuing Planning matters within Plymouth City Council's jurisdiction.

- 6.7 Any application submitted by Plymouth City Council shall be processed in the same transparent and impartial manner as for any other applicant with the Service Director for Strategic Planning and Infrastructure using his powers of referral if he considers it meets the provisions outlined in the Planning Committee Terms of Reference.

7.0 LOBBYING

- 7.1 It is recognised that lobbying is a normal and perfectly legitimate element of the process of considering planning applications. If a Councillor, who is not on the Planning Committee to determine an application, wishes to support a particular viewpoint then that Councillor has a right to appear at Planning Committee and seek permission to address the meeting.
- 7.2 It is, however, important that Councillors protect their impartiality and integrity in planning matters. Planning Committee Members will not breach the 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 COUNCILLOR INVOLVEMENT IN PLANNING APPLICATIONS PROCESS

- 8.1 Ward Councillors 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 Councillors 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 Councillors on planning matters in order for them to play this community leadership role. This will include the involvement of ward Councillors in negotiations on planning obligations.
- 8.2 To assist with Councillor engagement in the Planning process named Planning Officers have been identified for each ward. Councillors are encouraged to contact this officer to help them become engaged in planning decisions and ensure they can properly represent the issues raised by their residents.

Information available to Ward Councillors

- 8.3 The City Council web-site sets out development plan policies and supporting information and evidence base documents in order to help inform ward Councillors consideration of a development proposal at both pre-application and submission stages.

- 8.4 To further assist Ward Councillors in considering to what extent they wish to make comments on development proposals, every week Ward Councillors will be sent a link to the weekly planning list which includes all planning consent applications all pre applications submitted unless there is a specific exclusion from the public record by virtue of the Freedom of Information Act or Data Protection Act. In these cases the case officer will encourage the applicant to engage with Ward Councillors on a confidential basis.

Councillor Involvement at Development Enquiry Service (DES) Pre-Application Stage

- 8.5 Councillors should review the weekly planning list. Councillors should contact the named case officer at their earliest opportunity if they wish to draw attention to any particular planning or Section 106 related issues or concerns, specifying which site this relates to. This will enable officers, Ward Councillors and the developer to more positively engage together in progressing the pre-application discussions and take account of key local issues at an early stage. It is at this stage a Councillor should also indicate whether they wish to receive an informal presentation from or attend a meeting with the developer/agent. Pre-application engagement with Councillors will enable the developer to positively engage with ward Councillors at an early stage in the development process, without compromising the decision making process
- 8.6 Where requested, for major developments, the planning case officer will facilitate the opportunity for an informal presentation of the development proposal by the developer/agent to interested Councillors, at pre-application stage. A request for an informal presentation can be made by Councillors, the developer/agent or by planning officers. Informal DES presentations will generally be undertaken within 4 weeks of the Development Enquiry Service application being registered, and will be carried out fully in accordance with the Council's Code of Good Practice for Members and Officers, and the general advice contained in the National Model Code of Conduct (Local Authorities (Model Code of Conduct) Order 2007 - SI 2007/1159). Wherever possible meetings will be arranged for all interested Councillors to reflect Councillor availability, but in order not to unduly delay pre-application discussions Councillors will be expected to prioritise attendance at any DES meetings requested.
- 8.7 The purpose of these DES presentations is to inform Councillors 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. The collection and expenditure of Community Infrastructure Levy (CIL) payments will not be a matter for discussion at these meetings since CIL is non-negotiable and the expenditure will be determined through the governance of the Council's Regulation 123 List.
- 8.8 The developer's presentation will be limited to the facts of the development proposal.
- 8.9 Councillors 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 Councillors.

- 8.10 The planning case officer will highlight the key planning issues, summarising policy issues, third party views and other issues for consideration. Key issues raised at the DES meeting will be written up as part of the case officer's report to Planning Committee.
- 8.11 Councillors will be at liberty to express opinions in support or opposition for the proposals at meetings with the applicant if they wish, unless they are also a member of the Planning Committee.
- 8.12 Where a Councillor is also a member of Planning Committee this will be declared at the start of the meeting. The planning case officer will then make it clear that the Planning Committee Member is 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.
- 8.13 Local ward Councillor involvement at pre-application stage will not affect the speaking rights of the member at Planning Committee provided the local ward Councillor has followed the Council's Code of Good Practice for Members and officers.
- 8.14 The presentation will not form part of the formal negotiation process that will take place strictly between the Strategic Planning and Infrastructure Department and the applicant.
- 8.15 **Under no circumstances should Planning Committee Members meet with developers/landowners/applicant (or their advisors) without the presence of a Planning Officer.** To do so will be a breach of this code and may prejudice the integrity of any subsequent decisions made on any application. Councillors who are not members of Planning Committee are advised to seek advice from Planning Officers prior to agreeing to meet with applicants.

Councillor Involvement at Planning Application Stage

- 8.16 In accordance with the principles set out in the Statement of Community Involvement, Councillors should review the weekly list of planning applications. It is the Councillor's responsibility to 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.
- 8.17 Where a Councillor asks to be involved in the planning application discussions the case officer will arrange a meeting with the applicant (or their representatives) at a mutually convenient date and time and will always invite the other Ward Councillors to attend.
- 8.18 In order not to unduly delay the determination of planning applications Councillors will be expected to prioritise attendance at any planning meetings requested. This date will normally be within 3 weeks of receipt of the request for the meeting. Members can still make comments on a planning application within the statutory consultation period of 21 days.

- 8.19 The advice and discussions at any meeting will not bind the formal determination by the Local Planning Authority of the planning application.
- 8.20 Under no circumstances should Planning Committee Members meet with a developer without the presence of a Planning Officer and other Members are advised to seek advice from Planning Officers prior to meeting a developer.

Presentation to Councillors prior to Planning Committee

- 8.21 Planning Committee can request that a presentation is given to the Planning Committee Members prior to the formal Planning Committee. This will only be agreed in exceptional circumstances when there are complex issues that Planning Committee need to understand before they can make a reasoned Planning decision. For example it could be due to a legal ruling, the need to understand the activities being proposed by the applicant, or a complex policy issue. The need for a presentation will be at the complete discretion of the Chair of Planning Committee in consultation with the Service Director for Strategic Planning and Infrastructure.
- 8.22 The presentation will be held for the benefit of Planning Committee members only and any public or applicant involvement would be at the discretion of the Chair of Planning Committee in consultation with the Service Director for Strategic Planning and Infrastructure
- 8.23 The presentation will be chaired by the Chair of Planning Committee and be attended by appropriate Council Officers who will give factual information as requested by the Chair. Under no circumstances will there be a debate on the merits of the relevant planning application. The Chair will remind Members at the beginning of the meeting of their responsibilities not be pre-determined prior to the Planning Committee and the Chair would reserve the right to end the meeting if Members do not strictly adhere to the provisions set out in section 5 of the Code of Good Practice relating to pre-determination.
- 8.24 The meeting will not form part of the formal Planning Committee meeting, but will be referred to in the minutes that will accompany the formal planning decision.

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

- Lead Planning Officer
- Legal Officer
- Democratic Support Officer
- Case Officer
- Other professional inputs (as determined by the Service Director for Strategic Planning and Infrastructure)

10.0 ORDER OF PLANNING COMMITTEE CONSIDERATIONS

- 10.1 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, an aerial photograph of the site, photographs of the site, key application plans and drawings, video and other relevant material that the Officer considers will assist the Planning Committee in the consideration of the proposal.
- 10.2 In specific regard to the written reports prepared by Officers if there is found to be an error in the report after the reports have been published then the application will be deferred to the next Committee. Officers will bring this to the Planning Committee's attention at the start of the oral presentation. The Committee can, however, determine that the application should not be deferred if it is considered appropriate.
- 10.3 In most cases the Service Director for Strategic Planning and Infrastructure will make a recommendation to the Planning Committee to either refuse planning permission, with reasons, or to approve planning permission, with conditions. In exceptional circumstances the Service Director for Strategic Planning and Infrastructure 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 Service Director for Strategic Planning and Infrastructure may also need to report updates on specific aspects of a proposed development or undertake presentations of development proposals with the applicant at the early stages of a proposal. Where this is the case these will be separately identified on the Planning Committee agenda. In order to ensure efficient and effective decision making the Service Director for Strategic Planning and Infrastructure 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 Service Director for further negotiations in consultation with Chair, Vice Chair, and Lead Opposition Group Member for Planning.
- 10.4 Where further detail and clarification on a published report is required, this will be provided in the form of a written addendum report, to be made public no later than 5.00 p.m. the day prior to the Planning Committee meeting. Officers will always seek to ensure that the use of addendum reports is kept to the absolute minimum.

- 10.5 In exceptional circumstances, a further oral report may need to be provided at the Planning Committee meeting itself.
- 10.6 The order for consideration of all planning applications will be as follows:
1. Planning Officer Oral Presentation;
 2. Any Planning Committee Member(s) with a prejudicial interest who wish to speak for or against a proposal (who will then leave the room);
 3. Any eligible Ward Councillor(s) who wish to speak for or against the proposal;
 4. Any Public Speaker who wishes to speak against the proposal;
 5. Any Public Speaker who wishes to speak in favour of the proposal;
 6. Questions to the Planning Officer by Planning Committee Members and debate on the proposal;
 8. Planning Committee Members move and debate any alternative motions to the recommendation. The Lead Officer clarifies the wording of the alternative motion and the Chair puts these to the vote as appropriate (refer also to section 14);
 9. Chair of Planning Committee puts the original recommendation to the vote, if necessary;
 10. Formal Decision of Planning Committee on the proposal.
- 10.7 If Members request a point of clarification arising from what they have heard from any of the Speakers, to assist them with their consideration of the proposal, the Chair may, at his or her complete discretion, ask for a short adjournment so that the Lead Planning Officer can consult directly with the Speaker or another officer not present at the meeting who may be able to assist.

11.0 PUBLIC SPEAKING AT PLANNING COMMITTEE

- 11.1 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 Council's Democratic Support Section (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 Councillor. The exception to this would be a Councillor who has referred an item to Planning Committee. In such cases the Councillor will have been deemed to have registered to speak at Planning Committee through the referral process. Notification must be made in person by either telephone, letter or e-mail and must be received by no later than 4.30 p.m. two working days before the Planning Committee meeting. An individual who wishes to speak at Planning Committee must register personally.
- 11.2 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 11.

- 11.3 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 another representative nominated by them. In the case of third parties only those who have made written representations on the planning application during the statutory consultation period will be eligible to speak. In the case of Public Rights of Way applications there will also be a further participant, the landowner, who will be allowed to speak after the Officer presentation, and any Members, objectors and supporters have spoken.
- 11.4 In all circumstances the maximum number of public speakers will be one objector and one in support of the development proposal (plus a landowner for Public Rights of Way applications). 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 11 is satisfied.
- 11.5 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 provide their name, the application they are to speak on, and whether they are an objector or supporter of the proposal.
- 11.6 Speakers will be allowed to speak for up to a maximum of five minutes and there will be no further involvement of the speaker in the deliberations of the Planning Committee, except as outlined in paragraph 10.6. Speakers will NOT be given an opportunity to ask questions of the Members of the Planning Committee.
- 11.7 Speakers are not expected to provide any presentational material for the Planning Committee. However, if a speaker wishes to submit any presentational material to supplement their speech they must do so no later than the deadline for speaking as outlined in paragraph 11.1. The material must only deal with issues raised through the formal representations procedure on that particular application. Any other presentational material that is produced by speakers will not be accepted and will be disregarded.
- 11.8 In the event an application is deferred, anyone wishing to speak at the subsequent Planning Committee meeting must register in the normal way. Any previous speaker will not be given preference over other eligible speakers.
- 11.9 Speakers should not interrupt other speakers or interrupt the Planning Committee debate.
- 11.10 Speakers should not to make slanderous statements or any other racially motivated, discriminatory or inflammatory remarks.

- 11.11 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.
- 11.12 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 11.9 or 11.10 above.
- 11.13 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.
- 11.14 The Chair of Planning Committee at any time may require a Member of the Planning Committee to leave the meeting and take no further part in the proceedings if, in his or her opinion the Member has made statements that fall within 11.9 or 11.10.

12.0 SITE VISITS

- 12.1 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.
- 12.2 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 Service Director for Strategic Planning and Infrastructure either at least three working days before the Planning Committee meeting or during the Planning Committee site visit clearly specifying what additional material is needed and why.
- 12.3 Officers will normally organise a site visit ahead of any formal recommendation if they feel this would benefit Members' understanding of the proposal and subject to the agreement of the Chair. These site visits will be held prior to the Planning Committee meeting and will be agreed in advance in consultation with the Chair and Vice Chair. Councillors will be expected to give priority to attending this at the arranged time. If Councillors wish the Planning Committee to visit other sites on the Planning Committee agenda not already included in the scheduled site visit they should advise the Service Director for Strategic Planning and Infrastructure at the earliest opportunity. If Councillors cannot attend the scheduled site visit they will still be expected to have familiarised themselves with the site. Councillors should, however, inform the planning officer if they intend to enter the owner's property unaccompanied and seek clarification from the planning officer whether it is appropriate for them to be accompanied by an officer.

- 12.4 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.
- 12.5 If during the course of the consideration of any application a Councillor moves a resolution for a site visit on a site which was not included in the Scheduled site visit the Councillor 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.
- 12.6 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.
- 12.7 Site visits conducted by the Planning Committee will normally be unaccompanied (by third parties). As such there is no obligation on the Council to notify the applicant or objectors of the arrangements for a site visit. However it may be necessary to contact the applicant and/or landowner of the site and/or adjacent sites to gain permission to access private property. Before Councillors enter the site(s) or building(s) Officers will explain to any applicants, objectors, or supporters in attendance the procedure for the conduct of the visit. Officers will then explain to Councillors the issues relating to the Planning Committee item pointing out any site related matters as necessary. Councillors will be encouraged to ask Officers questions of fact.
- 12.8 Under no circumstances are Councillors of the Committee or Officers to enter into any discussions with Ward Councillors, applicants, supporters or objectors on the site visit regarding the merits or demerits of the proposal. During the site visit Councillors 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 (or a named substitute), the conduct of Councillors, 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 Councillors or Officers is in question, he/she will immediately suspend the site visit. If the Chair of the Planning Committee (or a named substitute) 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 Councillor).
- 12.9 Ward Councillors 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 Councillors to put forward any case for or against the proposal. The Ward Councillor 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.

12.10 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 Councillors 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.

12.11 At the discretion of the Chair of the Planning Committee (or a named substitute) a statement will be read out to all 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. Members cannot discuss the merits or otherwise of the proposal with developers, Ward Councillors or local residents.”

12.12 The Chair of the Planning Committee (or a named substitute) is able to suspend a site visit at any time if they are not conducted in an appropriate manner or where there are health and safety issues.

12.13 A record that a Planning Committee site visit has taken place should be made through a Planning Committee minute.

13.0 DECISIONS CONTRARY TO THE DEVELOPMENT PLAN

13.1 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.

13.2 All applications must be assessed in accordance with Section 38(6) of the Planning and Compensation Act 2004 and Section 70 of the Town and Country Planning Act 1990 as amended by Section 143 of the Localism Act 2011.

14.0 DECISIONS CONTRARY TO OFFICER RECOMMENDATION

14.1 The Planning Practice Guidance (PPG) 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 PPG 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.

- 14.2 Planning applications can also give rise to local controversy and sustained opposition, leading to Councillors being actively lobbied (see Section 7). However, as the Planning Policy Guidance makes clear, 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 material 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.
- 14.3 Once the Planning Committee agenda has been published any Councillor may seek advice from Planning Officers, irrespective of the recommendation made on any particular planning application, and discuss what options there are with the Service Director for Strategic Planning and Infrastructure or the Head of Development Management.
- 14.4 If a decision is to be made contrary to the Service Director for Strategic Planning and Infrastructure recommendation, then the Councillors 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. The reasons for the decision must be given prior to the vote and shall be minuted.
- 14.5 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 or agree to delegate to the Service Director for Strategic Planning and Infrastructure ;
 - (ii) Full statement of reasons for approval (as defined in Town and Country Planning (Development Management Procedure) (England) Order 2015)
 - (iii) Relevant Development Plan policies and proposals.
- 14.6 If Planning Committee wishes to add pre-commencement conditions to a decision to grant, the Service Director of Strategic Planning and Infrastructure will be granted delegated powers to refuse the application if the applicant does not agree to the condition, in order to satisfy the requirements of the Neighbourhood Planning Act 2017.
- 14.7 Where a Member of the Planning Committee moves a motion to refuse an application contrary to the Officers' recommendation then the Councillor 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;
- 14.8 In the event of a Councillor 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 proposals' impact, which are unsupported by an objective analysis, are more likely to result in a costs award.

- 14.9 If the Councillor moving the motion does not meet the requirements of 14.6 above the motion shall be not be deemed to have been properly made.
- 14.10 If, in the opinion of the Lead Planning Officer (that is the senior planning officer supporting the Chair at the meeting) the possible decision of the Planning Committee to refuse planning permission would carry a high risk of an award of costs against the Local Planning Authority, s/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 Lead Officer shall have regard to:
- The application's level of compliance with the Development 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.
- 14.11 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 Councillors and Officers carefully follow the above procedure in order to provide a legally binding decision.

15.0 APPEALS AND INQUIRIES

- 15.1 In the event that planning permission is refused either under delegated powers conferred on the Service Director for Strategic Planning and Infrastructure 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.
- 15.2 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. Councillors are at liberty to attend in their capacity as Ward Councillors and may be called to give evidence as a Ward Councillor. Members of the Planning Committee will not normally be required to attend to present the Council's case.

- 15.3 In the case where the Planning Committee has refused planning permission contrary to Officer's recommendations Officers will normally prepare and present the evidence in their role as employee of the Local Planning Authority. It will be for the Service Director for Strategic Planning and Infrastructure to identify the officers to prepare and present the evidence.
- 15.4 Members of the Planning Committee who voted to overturn a decision will be provided with a draft of the appeal statement and invited to comment before the officer sends it to the Planning Inspectorate. In addition, there may be some situations where in an informal hearing or Public Inquiry Councillor involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Service Director for Strategic Planning and Infrastructure considers this to be the case the Councillor will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.
- 15.5 In exceptional circumstances the Service Director for Strategic Planning and Infrastructure 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.

16.0 QUALITY OF SERVICE

- 16.1 The responsibility to provide a quality service is shared by both Officers and Councillors. Unnecessary delay at any point in the process of determining an application can result in customer commitments not being met. It can also mean costly delays and can damage the reputation of Plymouth City Council, the Planning Committee itself and its individual Councillors and Officers. This could have wider implications for the regeneration of Plymouth in terms of how investors, and indeed local people, perceive the city.
- 16.2 Therefore, when making decisions Councillors 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.

17.0 MONITORING AND REVIEW OF DECISIONS

- 17.1 Councillors 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.
- 17.2 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 Development

Framework. There may also be the need for review site visits during the determination stage of planning applications.

- 17.3 Councillors should assist in the preparation of the Local Development Framework/Local Plans 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 Portfolio Holder to discuss the interrelationships between policy development and policy application.
- 17.4 Councillors 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.

18.0 TRAINING

- 18.1 No Councillor may sit at a Planning Committee meeting without first having received appropriate mandatory Introduction to Planning Committee training. This training will expire if the Councillor 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 Councillor may not sit on the Planning Committee until they have renewed their Introduction to Planning Committee training.
- 18.2 Given the complex legislative framework for determining planning applications and the constant reforms and changes to procedure within the planning system, the Service Director for Strategic Planning and Infrastructure will provide a Planning Committee Training Programme. The following additional training is mandatory for all permanent Planning Committee members:
- An annual Planning Committee training session that will provide an overview of the key role of planning in the city and the role of Councillors 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 Councillors and will normally include a site visit to look at proposals relevant to the Planning Committee. Training will be undertaken by appropriate Legal and Planning Officers.
- 18.3 In addition there will be additional training Workshops on new Council and Central Government policy and legislation or other Planning issues that either Members request or Officers recommend.
- 18.4 The above training will usually be open to all Councillors of the Council to enable them to have a better understanding of planning issues in their role as Ward Councillors.
- 18.5 Councillors 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 Councillor to ensure that they have had at least the annual training in order to be able to sit at a Planning Committee meeting. The Service Director for

Strategic Planning and Infrastructure will maintain a register of Councillor training. Training will be provided using a range of training methods.

19.0 COMPLAINTS

- 19.1 A complaint that a Councillor or Officer has breached this code should be made in writing to the Head of Legal Services and would be referred to the Monitoring Officer for investigation and determination.
- 19.2 A complaint made in writing regarding the determination of a planning application or a related planning matter would be investigated by the Service Director for Strategic Planning and Infrastructure and/or an appropriate officer of the Strategic Planning & Infrastructure Department in accordance with the Council's complaints procedure.
- 19.3 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.

Paul Barnard, Service Director for Strategic Planning and Infrastructure

Peter Ford, Head of Development Management

Julie Parkin, Senior Lawyer

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