

Appendix I

“Probity in Planning” Planning Committee Code of Practice

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1.0 INTRODUCTION

- 1.1 The conduct of both Officers and Members in Local Government needs to be of the highest standing: on this depends the bond of trust between Councils and their local people, which is essential if Councils are to play their part in leading communities and improving people's quality of life. The local administration of the planning system has come under close scrutiny. The Nolan Committee's Third Report investigated standards in public life, and was followed by the Local Government Act 2000 which introduced a structure by which local authorities were to promote high standards of conduct, through a National Code of Conduct for Members. In 2009 the Local Government Association provided updated guidance on "Probity in Planning" and most recently the Localism Act 2011 has created a new Standard regime with a more local focus.
- 1.2 This Code offers clear guidance and advice as to procedures and practices to elected Members, Officers and members of the public in connection with the determination of planning applications and other applications. This Code will ensure that not only are the applications determined in a fair and impartial way, but also in a way which is seen to be fair and impartial. The introduction of the Local Government Act 2000 and associated legislation provides the necessary statutory framework, by which these standards may be achieved, maintained and regulated by each local authority.
- 1.3 Clearly, one of the key purposes of the planning system is to control development in the public interest. When performing this role the Local Planning Authority and elected members are making decisions that necessarily affect land and property interests, as well as the financial value and settings of land holdings. Clearly, there is a need to make decisions that are open, impartial and based on sound judgement and reason. The process of determining applications should leave no grounds for a suggestion that a decision has been impartial, biased or ill founded in any way. Decisions must always be made on planning grounds and planning grounds alone.
- 1.4 This Code of Good Practice has been adapted from national guidelines on probity to take account of the local situation. Two particular areas of the Localism Act are relevant to this code. Firstly, with regard to pre-determination the Act makes it clear that it is proper for councillors to play an active part in local discussions and that they should not be liable to legal challenge as a result, provided they maintain an open mind. Secondly, and related to pre-determination, the act introduces a new requirement for developers to consult local communities before submitting planning applications for certain developments. This gives Members and local residents a chance to comment when there is still genuine scope to make changes to proposals at both pre-application and post submission stage.
- 1.5 The Terms of Reference for Planning Committee is set out in the Council's Constitution (<http://www.plymouth.gov.uk/constitution>) 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 Members 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 Members are guided by the Council's Code of Conduct, the seven principles of public life and the Localism Act 2012. 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. Members must therefore take steps to ensure that in their discharge of their Planning Committee duties the distinction between this role and their role as an individual Ward Councillor is constantly made clear. If Members wish to act in the latter capacity they must make that clear at the outset. Members who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee, especially if they feel that they will often be placed in the position of wishing to represent constituents and wishing to

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

- 3.4 In reaching a decision Members should ensure they read, consider and take account of the relevant material considerations connected with the application and should not favour any person, group or locality or put themselves in a position where they may appear to do so.
- 3.5 All decisions should be made in an open and transparent manner by the Members of the Planning Committee and this should not at any time be compromised in any way. Therefore, such actions as messages being passed to Members of the Planning Committee during a debate should be avoided as this could give an impression of undue influence from a third party. In the first instance in an emergency any notes should be passed to the Democratic Support Officer.
- 3.6 Members should always address the Planning Committee through the Chair and avoid speaking directly to one another since it is important that all matters being discussed are clearly heard and acknowledged by everyone at the meeting.
- 3.7 In order to ensure that decisions are taken on planning grounds and are sound it is incumbent on all Planning Committee Members to give full consideration to reports prepared by Officers and familiarise themselves with all relevant national planning guidance (including the National Planning Policy Framework), Development Plan policies and other material considerations well in advance of the consideration of a development proposal at the Planning Committee itself. It is important also that Members are seen to be meeting this provision of the code.
- 3.8 The role of Officers is to advise Councillors and the Council as a whole (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 Member/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 Member to conduct themselves in a manner which would place them in conflict with their professional codes of conduct.

3.10 Members should abide by the following advice:

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

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

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

4.0 DECLARATION AND REGISTRATION OF MEMBER AND OFFICER INTERESTS AND BIAS

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

- 4.2 A register of Members' interests will be maintained by the Council's Monitoring Officer and is available for public inspection. A register of Planning Officers' interests will be maintained by the Assistant Director for Planning.
- 4.3 Furthermore, Members and Officers are under a duty to declare interests as and when matters arise at Planning Committee. Guidance on these issues may be sought 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 three types of interest, 'personal' 'prejudicial' and pecuniary. A member will have a personal interest in a Planning Committee decision if:
- If the matter relates to an interest in respect of which the Member has given notice in the statutory register of Member's interests; or
 - The decision might reasonably be regarded as affecting their well being or financial position or that of a relative or friend or employer to a greater extent than other Council Tax payers, ratepayers or inhabitants of the Authority's area.
- 4.5 Where a Member considers he or she has such a personal interest in a matter, he must always declare it.
- 4.6 A personal interest will become a prejudicial interest if a member of the public with knowledge of the relevant facts would reasonably regard that interest as so significant that it is likely to prejudice the Member's judgement of the public interest. There are exceptions to this, however and full details are given in the Council's constitution.
- 4.7 Where any Member of the Council considers that they have a prejudicial interest they should discuss this situation with the Monitoring Officer or his representative as soon as they realise this is the case:
- Complete a standard form and pass it to the Democratic Support Officer prior to the start of Planning Committee;
 - Ensure they do not participate at any stage in the consideration of the planning application if following advice from the Monitoring Officer they consider that any decision they take could be challenged on the grounds of bias;
 - Ensure they do not seek or accept any preferential treatment, or place themselves in a position that could lead to the public to think they are receiving preferential treatment because of their position as a councillor;
- 4.8 With regard to Planning Officer interests the Assistant Director for Planning Services will check the Officer declarations list and advise the Officer accordingly if they feel that alternative arrangements are necessary in presenting the report.
- 4.9 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 has in:

- any employment, office, trade, profession or vocation that they carry 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;
- any current contracts leases or tenancies between the council and them,
- any current contracts leases or tenancies between the council and any organisation with land in Plymouth in which they are or have a partner, a paid director, or have 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.

If a Councillor has a pecuniary interest they must leave the meeting immediately and can not 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.

- 4.10 Members should also not give grounds for a suspicion that any such interests may arise and have not been declared.
- 4.11 When an application is to be determined, there is an expectation that it will be dealt with transparently, openly and in a fair way. Members will be expected to take account of all relevant evidence and give it appropriate weight in the decision making process and arrive at a reasoned sound decision.
- 4.12 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 Member to attend the Planning Committee to speak on the local ward issues and for the Member of the Planning Committee, if s/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 member is clear they are still willing to listen to all the material considerations presented at the Planning Committee before deciding on how to exercise their vote on behalf of the community.
- 5.4 The fettering of a members discretion as set out in 5.1 and then taking part in the decision making process will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a risk of bias or predetermination or a failure to not take into account all of the factors enabling the application to be considered on its merits.
- 5.5 The Localism Act 2011 now sets out that a member 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 Member was open to changing their mind in the light of different or additional information, advice or evidence presented.
- 5.6 It will be evident that the appropriate action is not clear cut and will depend on the circumstances of a particular case and application. Planning Committee members need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, Members taking the decision on an application must take account of all the evidence presented before arriving at a decision, and should 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 Member decides to make a public statement, and either supports or opposes the application, it will be difficult for that Member to be seen to subsequently determine the application transparently, openly and fairly. Accordingly, the Member should make an open declaration, in relation to his or her position and not vote on the determination of the application at Planning Committee. The open declaration should be noted in the Planning Committee minutes. The Member will also be required to vacate their seat within the Planning Committee and to 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 member, they can address the Planning Committee at the appropriate time in accordance with the Ward Member speaking arrangements (see section 11).
- 5.8 Ultimately it is the responsibility of the individual member to ensure that their role on the Planning Committee is not compromised and it is also for them to strike the balance that may need to be made between ward and other interests and the requirements of the Planning Committee.

6.0 DEVELOPMENT PROPOSALS SUBMITTED BY MEMBERS, 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, Assistant 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, Assistant 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, Assistant 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 Members 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 Members.
- 6.6 Any application submitted by Plymouth City Council shall be processed in the same transparent and impartial manner as for any other applicant.

7.0 LOBBYING

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

- 8.1 Ward members have a central role in helping to represent the views of local people and other stakeholders at both pre-application and planning application stage. Ward councilors 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 councilors on planning matters in order for them to play this community leadership role. This will include the involvement of ward members in negotiations on planning obligations.
- 8.2 Planning obligations negotiated under Section 106 of the Town and Country Planning Act, 1990 must be seen to mitigate the effects of development whilst recognising that each must comply with council planning documents, policies and guidance and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).
- 8.3 To be lawful, a planning obligation must meet all of the following statutory tests. It must be:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- (These apply to both future and existing Section 106 obligations and to CIL payments).

- 8.4 To this end, where the need for a planning obligation is anticipated by a planning officer, ward councillors will be consulted at an early stage of the pre-application and planning application process. The views of ward councillors on planning obligations will be sought electronically through weekly lists and shall be considered in any decision taken by the Planning Committee or by an officer acting under delegated authority.

Information available to Ward Councillors

- 8.5 The following information will be available to ward councillors via the City Council website in order to help inform their consideration of a development proposal at both pre-application and submission stages:

- The Statement of Community Involvement, which sets out the principles, expectations and best practice for everyone involved in the planning process.
- The Sustainable Neighbourhood Assessments, which set out in detail an assessment of existing infrastructure, gaps in provision and key local issues within every neighbourhood in the city.
- The Infrastructure Needs Assessment, which sets out strategic infrastructure that is needed in parts of the city to support the overall growth agenda of the city.
- A summary of existing Section 106 agreements within every ward, which is updated quarterly.
- The planning policy framework, as set out in Policy CS33 of the Core Strategy and the Planning Obligations and Affordable Housing SPD: these provide the policy context for the negotiation of planning obligations and it will be important for ward members to be familiar with these.

- 8.6 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 by email only:

- A list of registered Development Enquiry Service requests where the applicant has indicated that they do not wish the pre-application to be confidential. Where an applicant has indicated that a pre-application enquiry is confidential these will not appear in the weekly list.
- A list of registered planning applications with links (where applicable) to details of the proposed Section 106 Obligations Heads of Terms, which will show what the developer is proposing for the Section 106 agreement and which provides a starting point for members to consider Section 106 matters on a particular planning application.

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

- 8.7 In accordance with the principles set out in the Statement of Community Involvement, councillors should review the weekly DES list. Upon receipt of the DES list ward councillors must contact the named case officer **within 10 working days** if they wish to draw attention to any particular planning or Section 106 related issues or concerns, specifying which site within their ward 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 ward councillor should also indicate whether they wish to receive an informal presentation from the developer/agent where this is a major development. (Informal presentations for minor or householder proposals will only be provided in exceptional circumstances at the discretion of the Assistant Director of Planning). Pre-application presentations to local ward 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
- 8.8 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 ward councillors, at pre-application stage. A request for an informal presentation can be made by ward 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 members within the ward affected by the proposal to reflect member availability, but in order not to unduly delay pre-application discussions members will be expected to prioritise attendance at any DES meetings requested.
- 8.9 The purpose of these DES presentations is to inform ward 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.
- 8.10 The developer's presentation will be limited to the facts of the development proposal.
- 8.11 Ward 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.

- 8.12 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.
- 8.13 Ward councillors will be at liberty to express opinions in support or opposition for the proposals at the meeting if they wish, unless they are also a member of the Planning Committee.
- 8.14 Where a ward 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.
- 8.15 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.
- 8.16 The advice given at DES stage does not necessarily bind the formal determination by the Local Planning Authority of any subsequent planning application.
- 8.17 **Under no circumstances should Planning Committee Members meet with developers/landowners (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 developers or landowners.

Ward Member Involvement at Planning Application Stage

- 8.18 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 **within 10 working days** of the publication of the list if they wish to draw attention to any particular planning or Section 106 related issues or concerns.
- 8.19 Where a ward councilor requests a presentation on a registered major planning application, this must be done within **10 working days** of receiving the weekly list. (Presentations for minor or householder proposals will only be provided in exceptional circumstances at the discretion of the Assistant Director of Planning). The purpose of any presentations at this stage is to inform ward councillors of the content of the planning application in order to enable ward councillors to make formal representations on the application within the published consultation period. 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.
- 8.20 Wherever possible meetings will be arranged for all members within the ward affected by the proposal to reflect member availability, but in order not to unduly delay the

determination of planning applications members 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.

- 8.21 The advice and discussions at any meeting will not necessarily bind the formal determination by the Local Planning Authority of the planning application.
- 8.22 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.

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 Assistant Director for Planning)

9.2 More information on the roles and responsibilities of the above Officers and Members are outlined in a guidance note which will be available at all Planning Committees, a copy of which can be found on the Council's website.

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 most cases the Assistant Director for Planning 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 Assistant Director for Planning 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 Assistant Director for Planning 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 Assistant Director for Planning 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 Assistant Director for further negotiations in consultation with Chair, Vice Chair, and Lead Opposition Group Member for Planning.

- 10.3 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.
- 10.4 In exceptional circumstances, a further oral report may need to be provided at the Planning Committee meeting itself.
- 10.5 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;
 7. Planning Committee Members debate and consider the proposal;
 8. Planning Committee Members move and debate any alternative motions to the recommendation. The Democratic Support 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.

- 10.6 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.

11.0 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 I and whether they wish to speak as a supporter, objector, or Ward Councillor. Notification must be made in person by either telephone, fax, 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 professional agents appointed by them to speak. 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 are advised not to make slanderous statements or any other racial 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 Assistant Director for Planning at least three working days before the Planning Committee meeting 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. These site visits will be held prior to the Planning Committee meeting and Members will be expected to give priority to attending this at the arranged time. If Members wish the Planning Committee to visit other sites on the Planning Committee agenda not already included in the scheduled site visit they should advise the Assistant Director for Planning at the earliest opportunity. If Members cannot attend the scheduled site visit they will still be expected to have familiarised themselves with the site.
- 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 Member moves a resolution for a site visit on a site which was not included in the Scheduled site visit the Member will need to give an explicit reason that must explain why the need for a site visit was not apparent prior to the Planning Committee meeting. In such cases the deferment for a site visit will need to be agreed by Planning Committee members through a majority vote.
- 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 Members 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 Members the issues relating to the Planning Committee item pointing out any site related matters as necessary. Members will be encouraged to ask Officers questions of fact.
- 12.8 Under no circumstances are Members of the Committee or Officers to enter into any discussions with Ward Members, applicants, supporters or objectors on the site visit regarding the merits or demerits of the proposal. During the site visit Members and Officers should avoid comments that could be interpreted as deliberations on the proposal itself, restricting themselves to questions of clarification or observations of fact. If, in the opinion of the Chair of the Planning Committee, the conduct of Members, Officers or third parties is of such a nature as to be potentially in conflict with any of these requirements, or the safety of the Members or Officers is in question, he/she will immediately suspend the site visit. If the Chair of the Planning Committee does suspend a site visit the application will be determined by a subsequent Planning Committee without further recourse to a site visit (even if a further request is made by a Member).
- 12.9 Ward Members will be notified and may be present at a site visit but this is only to accompany the Planning Committee members, it is not an opportunity for the Ward Members to put forward any case for or against the proposal. The Ward Member is only present to assist with any clarification that may be required in connection with local area issues and to hear the explanation given by the Officer.
- 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 Members regarding the site and the proposed development.
 - For the applicant or their agent to be present on the site, either to enable access or to ensure health and safety procedures are followed.
 - At the Chair's discretion, to visit third party premises.
 - To seek clarification on details of the planning application from officers, through the Chair.

- 12.11 All site visits will commence with the Chair of the Planning Committee making a statement 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 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.

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

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

14.2 Planning applications can also give rise to local controversy and sustained opposition, leading to Members being actively lobbied (see Section 7). However as Government guidance states:

“...local opposition or support for a proposal is not, in itself, a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons”. (“The Planning System: General Principles”, February 2004).

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 member may seek advice from Planning Officers, irrespective of the recommendation made on any particular planning application, and discuss what options there are with the Assistant Director for Planning or the Head of Development Management.

14.4 If a decision is to be made contrary to the Assistant Director for Planning recommendation, then the Members proposing, seconding or supporting a contrary decision must agree the planning reasons leading to this decision and must also give Officers an opportunity to explain the implications of such decision prior to the vote. 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;
- (ii) Full statement of reasons for approval (as defined in Town & Country Planning (General Development Procedure) (England) (Amendment) Order 2003);
- (iii) Relevant Local Plan and Local Development Framework policies and proposals.

14.6 Where a Member of the Planning Committee moves a motion to refuse an application contrary to the Officers' recommendation then the Member moving the motion MUST provide:

- (i) Full reasons for refusal, which must include a statement as to demonstrable harm caused and a list of the relevant plan and policies which the application is in conflict with;
- (ii) Statement of other policies relevant to the decision.

- 14.7 In the event of a Member motion to refuse, which is seconded, the Chair will if necessary adjourn the meeting for a few minutes to allow Officers to advise of any other relevant planning issues to assist them with their reasons. Vague, generalised or inaccurate assertions about a proposals' impact, which are unsupported by an objective analysis, are more likely to result in a costs award.
- 14.8 If the Member moving the motion does not meet the requirements of (i) and (ii) above the motion shall be not be deemed to have been properly made.
- 14.9 If, in the opinion of the Assistant Director for Planning 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 Assistant Director for Planning shall have regard to:
- The application's level of compliance with the Local Development Framework and other adopted policies;
 - The robustness of the evidence that can be cited to support a refusal of planning permission;
 - All other material considerations.
- 14.10 Any decision made during the Planning Committee forms the full and final decision of the Council (subject to agreed matters for deferral and final ratification) and it is therefore essential that both Members and Officers carefully follow the above procedure in order to provide a legally binding decision.

15.0 APPEALS AND INQUIRIES

- 15.1 In the event that planning permission is refused either under delegated powers conferred on the Assistant Director for Planning 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. Members are at liberty to attend in their capacity as Ward Members and may be called to give evidence as a Ward Member. Members of the

Planning Committee will not normally be required to attend to present the Council's case.

- 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 Assistant Director for Planning to identify the officers to prepare and present the evidence.
- 15.4 It should not be necessary for Members of the Planning Committee to become involved in preparing and presenting the case at appeal on an overturn decision, because the reasons for refusal and statements on relevant policies put forward by the Members in reaching their decision should be sufficient to defend the case. However, there may be some situations where in an inquiry a Member involvement as a relevant witness is necessary in order to provide a full and accurate case. In circumstances where the Assistant Director for Planning considers this to be the case the Member will be expected to attend any Informal Hearing or Public Inquiry in support of the Council's case.
- 15.5 In exceptional circumstances the Assistant Director for Planning 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 Members. 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 Members 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 Members and Officers need to ensure primarily that a fair and reasonable planning decision is made, but that in so doing account must also be taken of customer commitments.

17.0 MONITORING AND REVIEW OF DECISIONS

- 17.1 Members 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 Members 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 Members should therefore ensure that they are available for review visits as and when necessary throughout the year and for a whole day of visits for the Annual Site Visit.

18.0 TRAINING

- 18.1 No Member may sit at a Planning Committee meeting without first having received appropriate mandatory training as set out in paragraph 18.2. This training will expire if the Member has not sat on the Planning Committee within 12 months of receiving the training, or has had a gap of at least 6 months from the Planning Committee. Where the training has expired the Member may not sit on the Planning Committee until they have received the mandatory training.
- 18.2 Given the complex legislative framework for determining planning applications and the constant reforms and changes to procedure within the planning system, the Assistant Director for Planning will provide a Planning Committee Training Programme comprising regular sessions covering:
- An annual Planning Committee training session that will provide an overview of the key role of planning in the city and the role of Members in the planning process. This training will normally be held once the annual list of Planning Committee members are known and should be attended by both new and existing Members. Training will be undertaken by appropriate Legal and Planning Officers. If Members join Planning Committee after this training or act as a substitute for a Planning Committee Member, they will receive separate training.
 - Training Workshops on new Council and Central Government policy and legislation or other Planning issues that either Members request or Officers recommend.
 - Annual Site Visit.

- 18.3 The above training will usually be open to all Members of the Council to enable them to have a better understanding of planning issues in their role as Ward Councillors.
- 18.4 Members will be expected to make themselves available to attend these training sessions in order to keep up to date on the latest planning and development issues. It will be the responsibility of each individual Member to ensure that they have had at least the annual training in order to be able to sit at a Planning Committee meeting. The Assistant Director for Planning will maintain a register of Member training. Training will be provided using a range of training methods.

19.0 COMPLAINTS

- 19.1 A complaint that a Member 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 Assistant Director for Planning and/or an appropriate officer of the Planning 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, Assistant Director for Planning
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Julie Rundle, Senior Lawyer
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