

Planning Protocol Sub-Committee

Agenda

Date:	Thursday 6th January 2011
Time:	1.30 pm
Venue:	Council Chamber, Municipal Buildings, Earle Street, Crewe CW1 2BJ

The agenda is divided into 2 parts. Part 1 is taken in the presence of the public and press. Part 2 items will be considered in the absence of the public and press for the reasons indicated on the agenda and at the foot of each report.

PART 1 – MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS PRESENT

1. **Appointment of Chairman**

The Sub-Committee is asked to appoint a Chairman

2. **Apologies for Absence**

3. **Declarations of Interest**

To provide an opportunity for Members and Officers to declare any personal and/or prejudicial interests in any item on the agenda

4. **Public Speaking Time/Open Session**

In accordance with Procedure Rules Nos.11 and 35 a period of 10 minutes is allocated for members of the public to address the meeting on any matter relevant to the work of the meeting. Individual members of the public may speak for up to 5 minutes but the Chairman will decide how the period of time allocated for public speaking will be apportioned where there are a number of speakers. Members of the public are not required to give notice to use this facility. However, as a matter of courtesy, a period of 24 hours' notice is encouraged.

Members of the public wishing to ask a question at the meeting should provide at least three clear working days' notice in writing and should include the question with that notice. This will enable an informed answer to be given.

For requests for further information

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5. **The Planning Protocol** (Pages 1 - 24)

To examine the Planning Protocol and, if necessary, redraft it as a more succinct and practical guide for recommendation to the Constitution Committee.

There are no Part 2 Items

CHESHIRE EAST COUNCIL

Planning Protocol Sub-Committee

Date of Meeting: 6th January 2011
Report of: Democratic Services Manager
Subject/Title: The Planning Protocol

1.0 Report Summary

- 1.1 This report asks the Sub-Committee to review the existing Planning Protocol and if necessary produce a more succinct, user-friendly version.

2.0 Recommendations

- 2.1 That the Sub-Committee review the Council's Planning Protocol and if necessary produce a more succinct, user-friendly version for recommendation to the Constitution Committee.

3.0 Reasons for Recommendations

- 3.1 Since the adoption of the original version of the Planning Protocol by the Council, updated versions of guidance for Planning Councillors have been published. In addition, the Planning Protocol has been reviewed by the Chairmen and Vice-Chairmen of the Strategic Planning Board and Planning Committees, in conjunction with Officers. The Constitution Committee has appointed a Sub-Committee to advise on the production of a revised Protocol which is more succinct and user-friendly.

4.0 Wards Affected

- 4.1 N/A

5.0 Local Ward Members

- 5.1 N/A

6.0 Policy Implications

- 6.1 There are no direct policy implications arising from the proposals contained in this report.

7.0 Financial Implications

- 7.1 None can be identified.

8.0 Legal Implications (authorised by the Borough Solicitor)

- 8.1 There is a risk of legal challenge to the decisions made by the Strategic Planning Board and Planning Committee's if robust and consistent procedures are not in place in line with current national guidance.
- 8.2 There is also a greater risk of a Local Government Ombudsman complaint being upheld if the Authority does not provide clear, consistent and up to date advice to Councillors on carrying out their duties and responsibilities when determining Planning Applications and considering planning matters.

9.0 Risk Management

- 9.1 The Planning Protocol, in order to operate effectively, needs to be reviewed and updated regularly, and those amendments reported to the members of the relevant Committees so that members involved in the planning process are fully aware of the contents and their responsibilities.
- 9.2 If the reviews and updates do not take place, and members are not made aware of them, a number of risks can be identified:
- Generally, a lack of up to date advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board or Committees and for those involved as Local Ward Members
 - Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times and the appropriate actions carried out as a result
 - lack of, or inconsistent, up to date advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
 - lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
 - lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision making at Board/Committee meetings
 - Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.
- 9.3 The updated protocol should provide updated guidance and requirements on these points.

10.0 Background and Options

10.1 The report to the Constitution Committee on 30th September 2010 is attached as an Appendix. It sets out the background to this matter and includes proposed revisions to the existing Protocol which both the Strategic Planning Board and the Standards Committee had recommended to the Constitution Committee for approval. The Constitution Committee, however, resolved that:

(1) the Planning Protocol be not referred to Council for approval at this stage; and

(2) a sub-committee be appointed, the size, proportionality and membership to be determined in consultation with the Chairman and Group Whips, to be charged with examining the Protocol and, if necessary, redrafting it as a short sensible guide with the assistance of the Officer who drafted the amendments.

10.2 The Planning Protocol forms part of the Council's Constitution and any changes to it require the approval of Council on the recommendation of the Constitution Committee.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer.

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CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 30th September 2010
Report of: Monitoring Officer and Head of Planning and Policy
Subject/Title: The Planning Protocol

1.0 Report Summary

- 1.1 This report presents, as an Appendix, proposed amendments to the Planning Protocol adopted by the Council on 24th February 2009. The Constitution Committee is asked to review the proposed amendments and, if content to do so, recommend them to Council.

2.0 Recommendations

- 2.1 That, subject to any comments by the Standards Committee, Council be recommended to approve the proposed amendments to the Planning Protocol as set out in the Appendix for incorporation into the Constitution.

3.0 Reasons for Recommendations

- 3.1 Since the adoption of the original version of the Planning Protocol by the Council, updated versions of guidance for Planning Councillors have been published. In addition, the Planning Protocol has been reviewed by the Chairmen and Vice-Chairmen of the Strategic Planning Board and Planning Committees, in conjunction with Officers.

4.0 Wards Affected

- 4.1 All wards would be affected by the proposed change.

5.0 Local Ward Members

- 5.1 All local ward members would be affected by the proposed change.

6.0 Policy Implications

- 6.1 There are no direct policy implications arising from the proposals contained in this report.

7.0 Financial Implications

- 7.1 None can be identified.

8.0 Legal Implications (authorised by the Borough Solicitor)

- 8.1 There is a risk of legal challenge to the decisions made by the Strategic Planning Board and Planning Committee's if robust and consistent procedures are not in place in line with current national guidance.
- 8.2 There is also a greater risk of a Local Government Ombudsman complaint being upheld if the Authority does not provide clear, consistent and up to date advice to Councillors on carrying out their duties and responsibilities when determining Planning Applications and considering planning matters.

9.0 Risk Management

- 9.1 The Planning Protocol, in order to operate effectively, needs to be reviewed and updated regularly, and those amendments reported to the members of the relevant Committees so that members involved in the planning process are fully aware of the contents and their responsibilities.
- 9.2 If the reviews and updates do not take place, and members are not made aware of them, a number of risks can be identified:
- Generally, a lack of up to date advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board or Committees and for those involved as Local Ward Members
 - Personal and prejudicial interests and fettering of discretion not being identified and declared at the required times and the appropriate actions carried out as a result
 - lack of, or inconsistent, up to date advice concerning how Councillors respond to requests for any meetings with developers, applicants, neighbours, Parish/Town Councils
 - lack of, or inconsistent, advice regarding lobbying of and by Councillors and how to react to this
 - lack of clarity and inconsistent procedures applied throughout Cheshire East with regard to decision making at Board/Committee meetings
 - Complaints to the Local Government Ombudsman being upheld over conduct and matters that occur at Board/Committee meetings and during the conduct of planning applications.
- 9.3 The updated protocol provides updated guidance and requirements on these points.

10.0 Background and Options

- 10.1 A Planning Protocol was adopted as part of the Constitution by the Council in February 2009. This was expected to be reviewed by Officers and Members in light of any new Guidance that had been published. Changes were also expected to arise as a consequence of the operation of the Planning Protocol following the early work of the Strategic Planning Board and Planning Committees.
- 10.2 In August 2009 a meeting between the Chairmen and Vice-Chairmen of the Strategic Planning Board and Planning Committees and relevant Planning Officers took place to review a number of issues arising out of the first three months of the operation of the Development Management Service for Cheshire East. This included the operation of the Planning Protocol.
- 10.3 At that meeting it was noted that an updated version of the Local Government Association guidance document, "Probity in Planning", had been published. Whilst not necessitating whole scale changes to the Planning Protocol, some further clarification could be incorporated within the Planning Protocol for Cheshire East. Additionally, there were a number of amendments/clarifications that Officers had identified for the Planning Protocol through the operation of such for the initial months of Cheshire East.
- 10.4 An amended Planning Protocol has now been produced and is attached as an Appendix to this report. The changes made have been tracked through the document to make them easy to locate and identify.
- 10.5 The amended Planning Protocol was considered by the Strategic Planning Board at its meeting on 25th September 2010. The Board resolved that the amended Planning Protocol be commended to the Constitution Committee for inclusion in the Constitution subject to minor amendments to paragraph 8.4 and 4.5, and to any views that are expressed by the Standards Committee. The amendments recommended by the Strategic Planning Board have been incorporated into the document at the Appendix to this report and are identified in blue typeface.
- 10.6 The Standards Committee will be considering the amended Planning Protocol at its meeting on 27th September 2010, and any further amendments proposed will be reported to this Committee at the meeting.
- 10.7 Aside from the Strategic Planning Board amendments, the main changes are to sections 4, Fettering Discretion in the Planning Process and 7, Contact with Applicants, Developers and Objectors, with other changes picking up basic typographical errors or making minor amendments and clarifications to existing wordings.
- 10.8 The changes to section 4 are an attempt to clarify the position of Members in avoiding fettering of discretion and when a Member has fettered their discretion. This is a result of updated guidance in the Probity in Planning document and as a result of specific issues that have arisen for Cheshire East.

Members may be aware that the Coalition Government has indicated that it may look at the issue of pre-determination/fettering of discretion, and guidance may therefore change again in the future. For the time being, however, the Protocol should be changed to reflect the present position.

- 10.9 The newly-added section 4.5 reminds Members that they can refer members of the public to other Councillors within the same Ward, particularly if they are not on the Strategic Planning Board or the same Committee. Even if they are, it may be that Members determine that one of the ward members should be the voice of the Local Community and effectively fetter their discretion, but that this would leave the other Member/s free to take part in the decision-making process at the relevant Committee.
- 10.10 Section 4.7 is additional guidance as to what a member who has fettered their discretion (pre-determined the item) should then do at the meeting, again following the updated Probity in Planning document and experiences of the three Committees. Clarification is provided that a pre-determining Member should not simply push their chair back from the Committee table; they should as a minimum move to the public gallery to be clear that they are no longer part of the decision-making body. Should the Member wish to speak under the Public Speaking Protocol, they should do so from the public gallery, and return there after speaking until the item has been concluded, when they can rejoin the Committee. However, Members should be alive to circumstances where they should do more to distance themselves from the decision-making (eg by leaving the room at an appropriate point).
- 10.11 The addition to Section 7 regarding Pre-Application Discussions is provided as high level general advice as it is understood that the Development Management Officers are to provide a further, more detailed guidance document akin to that already produced on Site Visits and Call-in of applications. Again, this follows additional guidance produced in the Probity in Planning document and the updated Positive Engagement – a Guide for Planning Councillors (updated version) which is produced by a number of bodies including the Planning Advisory Service, Local Government Association, Planning Officers Society, Association of Council Solicitors and Secretaries and the Standards Board for England. The Government is committed to more pre-application discussion with developers as part of the Development Management process and as a result there is a need to provide advice to Members on their role in the process.
- 10.12 The Vice-Chairman of the Constitution Committee has submitted a separate request that the Committee review the Planning Protocol at this meeting.

11.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer.

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PLANNING PROTOCOL OF CONDUCT IN RELATION TO THE DETERMINATION OF PLANNING MATTERS

This Planning Protocol of Conduct for the determination of planning matters ('the Planning Protocol') substantially follows the Model members Planning Code of Good Practice, produced by the Association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England.

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A number of other national guidance documents have also provided a reference for the content of this Planning Protocol, including, but not exclusively,

- the Local Government Association Probity in Planning guidance note,
- the Standards Board For England Model Code of Conduct guidance for members,
- the Planning Advisory Service and Improvement and Development Agency Area Based Decision Making for Development Control – a review,
- the updated version of Positive Engagement, a guide for Planning Councillors which is a jointly produced document from Communities and Local Government, Planning Advisory Service, Local Government Association, the Planning Officers Society, the Association of Council Secretaries and Solicitors and the Standards Board for England.

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The aim of the Planning Protocol is to give advice aimed at ensuring the preservation of the integrity of the planning system as open and fair to all parties. It is intended that the Planning Protocol will continue to engender public confidence in the planning system within Cheshire East, whilst avoiding procedural rules which are so rigid and overbearing that observance of them would become an end in itself at the expense of the consideration of the merits of an application.

1 INTRODUCTION

- 1.1 **The aim of this Planning Protocol** is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well-founded in any way.
- 1.2 **The key purpose of Planning** is to manage development in the public interest.
- 1.3 **Your role as a Member of the Planning Authority** is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 1.4 **When the Planning Protocol applies:** this Planning Protocol applies at all times when Councillors are involved in the planning process. (This includes, where applicable, when part of decision-making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.
- 1.5 **If you have any doubts about the application of this Planning Protocol to your own circumstances** you should seek advice early, from the Monitoring Officer, and preferably well before any meeting takes place.

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- 1.6 In this Planning Protocol "Planning Meeting" covers all meetings of the Strategic Planning Board and the Planning Committees.

2 RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1 Do apply the rules in the Members' Code of Conduct first, which must always be complied with throughout the decision making process.
- 2.2 Do then apply the rules of this Planning Protocol, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Planning Protocol you may put :-
- the Council at risk of proceedings on the legality or maladministration of the related decision; and
 - yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee.

3 DEVELOPMENT PROPOSALS AND INTERESTS UNDER THE MEMBERS' CODE

- 3.1 Do disclose the existence and nature of any interest, including any perceived interest, at any relevant meeting, including informal meetings or discussions with officers and other Councillors. **This is your responsibility.** Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter. The requirements for you to declare any interest apply whenever you are in attendance at a meeting, regardless of whether you are a member of the Committee or not.

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- 3.2 Do then act accordingly. **Where your interest is personal and prejudicial:-**

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority. You must withdraw from the meeting room when the matter is announced unless you are exercising your public speaking rights. Please see paragraph 11 for your right to attend and make representations under the Public Speaking Protocol.
- **Don't** try to represent local, Ward or Area views, get another Member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal

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and prejudicial interest in a proposal, using your position to discuss that proposal with Officers or Councillors when other members of the public would not have the same opportunity to do so.

- Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places greater limitations on you than would apply to a normal member of the public.

3.3 Do notify the Monitoring Officer and Head of Planning and Policy in writing of your own application, or if you are employed as an agent and note that:-

- notification to the Monitoring Officer and the Head of Planning and Policy should be made no later than submission of the application;
- the proposal will always be reported to the planning meeting and not dealt with by Officers under the scheme of delegation; and
- it is advisable that you employ an agent to act on your behalf on the proposal in dealing with officers and any public speaking at the planning meeting (*where appropriate*) to avoid public criticism
- you do have a right to make written representations to officers about the proposal and may address the planning meeting pursuant to the Public Speaking Protocol subject to certain additional restrictions (see paragraph 11 below for more detailed advice on this point).

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4 FETTERING DISCRETION (PREDETERMINATION) IN THE PLANNING PROCESS

Given the requirement that Councillors of the planning meetings should exercise an independent mind and decide proposals in accordance with the relevant planning considerations, Councillors must not favour any person, company, group or locality or commit themselves to a particular point of view on a planning application prior to its full consideration at the Council's planning meetings.

4.1 **Don't** fetter your discretion and therefore your ability to participate in planning decision-making at this Council by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides.

4.2 **Fettering your discretion** in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

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4.3 Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than a matter of dual membership, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)

4.4 Do remember that you are, of course, free to listen to a point of view about a planning proposal, give procedural advice and agree to forward any comments, but should then refer the person to the appropriate planning officer.

4.5 Do remember that where other ward Councillors are available and where they do not sit as a member of the same planning meeting, they will not be subject to the same restrictions regarding fettering of discretion and are therefore a valid alternative contact for members of the public or lobby groups.

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4.6 Do not use any political group meetings prior to the planning meeting to determine how you or other Councillors should vote. There is no objection to a political group having a predisposition, short of predetermination, for a particular outcome or for you to begin to form a view as more information and opinions become available but you should not make up your mind until you have read the planning officer's report and update and heard any further representations and the debate at the planning meeting.

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4.7 Don't speak and vote on a proposal where you have fettered your discretion. You are not legally obliged to withdraw from the room but in most circumstances doing so will counter any potential suggestion that you influenced the remaining members by your continued presence. If in any doubt you should seek advice from the Monitoring Officer. If you do not withdraw, as a minimum you must withdraw to the public area of the meeting room for the whole of the consideration of the matter, whether or not you are also exercising your right to speak.

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4.8 Do explain that you do not intend to speak and vote as a member of the planning meeting because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.

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4.9 Do take the opportunity to exercise separate speaking rights where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest. Where you do :

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- advise the democratic services officer or Chairman that you wish to speak in this capacity before commencement of the item;

- remove yourself from the member seating area to the public gallery for the duration of that item and do consider whether you need to leave the room; and

- ensure that your actions are recorded.

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5 MEMBERSHIP OF PARISH COUNCILS AND OUTSIDE BODIES

5.1 Do be aware that, whilst the Members' Code of Conduct provides for a presumption that you may regard yourself as not having a personal interest in matters which relate to the organisations mentioned below and if you do not intend to speak on the matter at the planning meeting, you must exercise your discretion in deciding whether or not to participate in each case and where:

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- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :
 - (a) another local or public authority of which you are a member; or
 - (b) a body to which you have been appointed or nominated by the Council as its representative; or
 - (c) you are a trustee or company director of the body submitting the proposal and were appointed by the Council

— you should always disclose a prejudicial as well as personal interest and withdraw.

Where you do intend to speak on a matter at the planning meeting, or are unsure if you wish to do so, it is advisable to declare that interest at the start of the meeting, although you are not legally obliged to.

5.2 Do consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the parish council, for example), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- you make it clear to the consultee body that:
 - (a) your views are expressed on the limited information before you only;
 - (b) you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning meetings and you hear all of the relevant information; and
 - (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the planning meeting; and

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- you disclose the personal interest regarding your membership or role when the planning meeting comes to consider the proposal.

6 CABINET MEMBERS

There is no Constitutional or legal reason why a Cabinet member should not also be a member of the planning meeting and take part in the decision-making processes which are not part of the executive function.

6.1 Be aware that you should not speak or vote as a member of any planning meeting on any matter which you have discussed at Cabinet unless you have demonstrated there and can do so at the relevant planning meeting that you have not predetermined the application.

6.2 Do not take part as a member of any planning meeting on a matter in which you may have been seen as advocating a proposal as a Cabinet Member.

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6.3 Do take the opportunity to exercise separate speaking rights under the Public Speaking Protocol where you have fettered your discretion, but do not have a personal and prejudicial interest. Where you do :

- advise the democratic services officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area to the public gallery for the duration of that item and consider leaving the room after you have spoken; and
- ensure that your actions are recorded

7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

7.1 Do refer those who approach you for planning, procedural or technical advice to officers.

7.2 Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it and particularly between the submission of an application and the planning meeting where it is to be determined. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Head of Planning and Policy organise it. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action and that views expressed are provisional, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Planning meetings.

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7.3 Do otherwise:

- follow the rules on lobbying;
- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Head of Planning and Policy any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- ask relevant questions for the purpose of clarifying your understanding of the proposals but do not express any strong view or state how you or other Councillors might vote.

7.4 In addition in respect of presentations by applicants/developers:

7.5 Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.

7.6 Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

7.7 Do remember that a presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Planning meeting of the planning authority.

7.8 Do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Councillors might vote.

PRE APPLICATION DISCUSSIONS

It is recognised that pre-application discussions can be of great benefit to the planning process, however, this may create some risks for Councillors and for the integrity of the decision making process and therefore they should only take place within clear parameters and governance arrangements and always with officers present and a written record of the discussions made and kept.

7.9 Do ensure that if you are involved by an officer in pre-application discussions that it is made clear that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional, as by their very nature not all relevant information will be available and no formal consultation with interested parties will have taken place.

7.10 Do not seek to give advice in pre-application discussions upon policies within the Development Plan and other material considerations that may be relevant to a particular proposal or be drawn into negotiations. Ask officers to deal with any

of these points to ensure a consistent and co-ordinated approach from the Council.

7.11 Do respect a request for confidentiality where there is a legitimate reason justifying non-disclosure. Seek advice from the officers present if you are unsure.

7.12 Do seek to provide information on matters of fact, local knowledge and geography rather than the merits of any proposed application.

7.13 Don't use your position to improperly influence decisions in pre-application meetings.

7.14 Do ask for an officer briefing on the content of pre-application meetings if you are uncomfortable about attending those meetings yourself.

8 LOBBYING OF COUNCILLORS

8.1 Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality and therefore your ability to participate in the planning meetings decision-making to express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.

8.2 Do remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

8.3 Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25.

8.4 Do copy or pass on any lobbying correspondence you receive to the Head of Planning and Policy at the earliest opportunity or declare the receipt of lobbying information at the planning meeting.

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8.5 Do promptly refer to the Head of Planning and Policy any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.

8.6 Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

8.7 Do note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Protocol through:

- listening or receiving viewpoints from residents or other interested parties;

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- making comments to residents, interested parties, other Councillors or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

9 LOBBYING BY COUNCILLORS

- 9.1 **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest and have to withdraw.
- 9.2 **Do** register your membership of any lobby group.
- 9.3 **Do** declare the existence and nature of your interest in any lobby group at Planning meeting meetings so that members of the public are informed about interests that may relate to your decisions. Often this will be a personal interest and you can continue to participate but note that it can sometimes be a prejudicial interest or lead to allegations of bias or predetermination and in those circumstances you must withdraw from the meeting.
- 9.4 **Do** not take part in any matter which relates directly to the lobby group of which you are a member rather than to the views it holds. If the Planning meeting is discussing a planning application submitted by the group you should consider that you have a prejudicial interest and should act accordingly.
- 9.5 **Do** weigh up the following factors where your lobby group has expressed a public view on a matter and consider whether a reasonable member of the public, knowing the relevant facts, would think that you appear biased. The factors are:
- the nature of the matter to be discussed
 - the nature of your involvement with the lobby group
 - the publicly expressed views of the lobby group
 - what you have said or done in relation to the particular issue
- 9.6 **Do not** become a member of an organisation whose primary purpose is to promote or oppose specific planning proposals or those within a limited geographical area, as you may be perceived as having fettered your discretion.
- 9.7 **Do** remember that if the local branch of a general interest group has been vociferous or active on a particular issue or you are closely associated with the management or decision making process of that organisation such as its

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Chairperson or a member of the planning meeting, it will become increasingly difficult to demonstrate your ability to judge the matter with an open mind and you may appear biased and therefore you should consider whether it is appropriate for you to take part in the decision making process.

- 9.8 **Do not** publicly support a particular outcome on a proposal within your Ward or actively campaign for it if you wish to take part in the decision making process. It would be very difficult for you to demonstrate that you had the necessary degree of impartiality to properly weigh the arguments presented and the decision would be open to challenge. Again it is a question of maintaining the fine balance between a predisposition where your mind is not totally made up and a predetermination. This would, however, not prevent you from expressing the views of your constituents provided you are capable of determining the Application in accordance with the law.
- 9.9 **Do** join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, but disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the planning meeting that you have reserved judgement and the independence to make up your own mind on each separate proposal.
- 9.10 **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken. It is difficult to define "excessively" but you need to consider whether a member of the public, knowing the facts, would think that, through your representations, the lobbied member was no longer able to take a view on the matter in the public interest but had predetermined it.
- 9.11 **Don't** decide or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Councillors should vote on a planning issue.

10 SITE INSPECTIONS

Site Inspections can play a legitimate part in the decision making exercise but must be limited to inspections by viewing and as a fact finding exercise. They are not to be used to determine a proposal prior to the meeting of the Planning meetings. It should be noted that this Section applies to Councillors requests for a Site Inspection and that the Head of Planning and Policy may arrange Site Visits Inspections without prior discussion where, in his professional opinion, there is a real benefit from viewing the site.

It is important to ensure that Councillors taking planning decisions are in possession of all the facts, including matters that may have been pointed out or come to light during a site visit. Attendance of Councillors will not only demonstrate that Councillors are fully informed but will also ensure that high quality consistent and sound decisions are made, and that the risks of legal challenge are minimised. The expectation is that all Planning meeting Members will attend all formal site inspections and a record of attendance will be maintained and monitored.

The Council has a separate protocol that deals with Site Inspections in more detail, the advice contained within this planning protocol is general advice which is developed further by the Site Inspection Protocol.

- 10.1 **Do** try to attend site inspections organised by the Council where possible.
- 10.2 **Don't** request a site inspection unless you feel it is strictly necessary because:
- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed; or
 - details of the proposed development cannot be ascertained from plans and any supporting information to Councillors satisfaction at the planning meeting; or
 - where design considerations are of the highest importance particularly in relation to the surrounding locality.
- 10.3 **Do** ensure that any information that you gained from the site inspection is reported back to the Planning meetings, so that all Councillors have the same information.
- 10.4 **Do** ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.
- 10.5 **Do** ask the officers at the site inspection questions or seek clarification from them on matters which are relevant to the site inspection.
- 10.6 **Do** be prepared to listen to and ask questions of fact from the Applicant or other parties but do not be drawn into arguments or detailed discussions on the individual merits of an application or give the impression that you have made up your mind. The decision can only be made at the Planning meeting and you should make this clear to any applicant or other party and suggest that they make written representations or use of the Public Speaking arrangements and direct them to, or inform, the officer present.
- 10.7 **Don't** express opinions or views to anyone, and remember that your conduct on a site inspection may inadvertently suggest that you have already formed a view.
- 10.8 **Don't** enter a site, which is subject to a proposal other than as part of an official site inspection, even in response to an invitation, as this may give the impression of bias unless:
- you feel it is essential for you to visit the site other than through attending the official site inspection;

- you have first spoken to the Head of Planning and Policy about your intention to do so and why (which will be recorded on the file) and
- you can ensure you will comply with these good practice rules on site inspections.

11 PUBLIC SPEAKING AT MEETINGS

The Council has a separate protocol that deals with [the procedure for](#) Public Speaking at meetings in more detail, the advice contained within this planning protocol is general advice which is developed further by the Public Speaking Protocol.

- 11.1 **Don't** allow members of the public to communicate with you during the planning meeting proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.
- 11.2 **Do** ensure that you comply with the Council's Protocol for Public Speaking at Planning Meetings.
- 11.3 All Councillors are entitled to speak at a planning meeting in accordance with the Public Speaking Protocol either as an individual, representative or ward member. However, where you might be regarded as having a personal and prejudicial interest in the application then you may attend and speak in accordance with the protocol but only for the purpose of making representations, answering questions or giving evidence relating to the matter in the same manner as would apply to a normal member of the public. Immediately after doing so you must leave the meeting room whilst the meeting considers the proposal even though members of the public may remain. [Planning Councillors who have pre-determined a matter may also exercise public speaking rights and should consider withdrawing from the meeting room having spoken on a matter to counter any potential suggestion that you influenced the remaining members by your continued presence.](#)

12 OFFICERS

Councillors and officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate whilst officers are responsible to the Council as a whole. Their relationship is based upon mutual trust and understanding and this must never be abused or compromised. Instructions to officers can only be given through a decision of the Council, the Cabinet, Board or Committee or under delegated powers and not by individual Councillors acting outside those powers.

- 12.1 **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Planning and Policy, which may be incorporated into any committee report.)
- 12.2 **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Head of Planning and Policy or those officers who are authorised by the Head of Planning and Policy to deal with the proposal at a Member level.

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- 12.3 Do recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the planning meeting or its Councillors
- 12.4 Do be aware of the Member/Officer Relations Protocol.

13 DECISION MAKING

The Strategic Planning Board has adopted a separate protocol that deals with the Call in of planning applications in more detail, the advice contained within this planning protocol is general advice which is developed further by the Call In Procedure.

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13.1 Do ensure that, if you request a proposal to go before the planning meeting rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the planning meeting. Take care that the wording of your planning reasons do not suggest that you have already formed a view on the application, if you have not done so, and have therefore fettered your discretion. Seek advice on this from officers if necessary.

13.2 Do come to meetings with an open mind and demonstrate that you are open-minded.

13.3 Do comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

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13.4 Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse the application.

13.5 Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire item, including the officers' introduction to the matter.

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13.6 Do have recorded the reasons for the planning meeting's decision to grant, refuse or defer any proposal.

13.7 Do delegate to the Head of Planning and Policy the drafting of conditions that the Planning meeting may wish to add or amend when considering an application, ensuring that an explanation of why the change or addition is required is given to the planning meeting.

13.8 Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly

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identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

- 13.9 Do, where necessary, consider the drafting of conditions for sensitive applications that the planning meeting wish to approve against Officer recommendation at the next meeting of the planning meeting to allow Officers to formulate appropriate conditions and provide the planning meeting with any relevant further new information.

13.10 Do, where necessary, consider deferring the consideration of an application to another meeting if there is a very strong objection from officers on the validity of reasons, to allow the proposed reasons to be tested and discussed further.

13.11 Do comply with the Protocols adopted by the Strategic Planning Board.

14 TRAINING

- 14.1 Don't participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- 14.2 Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

15 INVOLVEMENT IN SECTION 106 AGREEMENTS

The guidance in respect of planning obligations is similar to that of planning conditions in that they must be relevant to planning and directly related to the proposed development if they are to be taken into account in making a decision on a planning application. Local Planning Authorities should not grant planning permission for unacceptable development because of unrelated benefits offered by the applicant and should not be unduly influenced by any benefits offered.

- 15.1 Do remember that requirements to be included within Section 106 Agreements should be considered and discussed at pre-application stage. The Officers will provide advice on general requirements, but if you are aware of any additional potential requirements please refer these to the Head of Planning and Policy as soon as you become aware of them.
- 15.2 Do remember that the purpose of Section 106 Agreements is to help make acceptable, development which would otherwise be unacceptable in planning terms, by prescribing the nature of the development, or compensating for loss or damage created by the development, or to mitigate a developments impact. They must therefore be relevant to planning and relate fairly and reasonably to the development.

- 15.3 Do include the content of Section 106 Agreements in the debate that takes place at planning meetings, whether you are a member of the planning meeting or a visiting Member who wishes to speak on the application.
- 15.4 Don't hold formal or informal meetings with Applicants, Developers and Objectors over the contents of potential Section 106 agreements. If you feel that a meeting would be useful to clarify the issues, you should ask the Head of Planning and Policy to arrange such a meeting. In this way the relevant Officers can be at the meeting, and those present can be made aware that the discussions will not bind the authority, and that the meeting can be properly recorded on the application file and the record of the meeting disclosed when the application is considered.
- 15.5 Do remember that it is imperative that a Ward Councillor's role continues after the completion of the Section 106 Agreement, by assisting Officers in ensuring that Section 106 Agreements are complied with. This includes noting when development is being undertaken and assisting Officers in ensuring triggers within Section 106 Agreements are complied with. Ward Councillors should contact Officers for any information on completed Section 106 Agreements.

16 MONITORING AND REVIEW

- 16.1 The Head of Planning and Policy will report annually to the Standards Committee regarding whether the arrangements set out in this Planning Protocol have been complied with and will include any proposals for amendment in the light of any issues that have arisen during the year.
- 16.2 In particular, the Head of Planning and Policy shall monitor the following:-
- (a) the number of complaints made about breaches of the Planning Protocol and the outcome of those complaints;
 - (b) the number of appeals upheld;
 - (c) any external inspection reports in respect of relevant issues;
 - (d) the level of awareness of the Planning Protocol among Councillors and Officers; and
 - (e) the number of Ombudsman reports finding maladministration by Councillors in the conduct of planning issues.

17 BREACHES OF THE PLANNING PROTOCOL

Maintaining high ethical standards enhances the general reputation of the Council, its Councillors and its officers. Open and transparent decision making enhances local democracy and should lead to better informed citizens. This Planning Protocol, along with Cheshire East's Members Code of Conduct are intended to promote these standards.

- 17.1 Do be aware of your responsibilities under this Code and the Members Code of Conduct.
- 17.2 Do report any apparent breaches of either the Code of Conduct or the Planning Protocol to the Monitoring Officer.

- 17.3 Do seek advice if you are in doubt.
- 17.4 Failure to comply with the Members Code of Conduct may lead to a complaint to the Standards Committee who can, in certain circumstances disqualify a Councillor. Failure to comply with this Planning Protocol may lead to a finding of Maladministration by the Ombudsman or could lead to a decision being challenged in the courts.
- 17.5 Allegations on any breach of this Planning Protocol by Members may be referred to the Monitoring Officer for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the political group.