

CHESHIRE EAST

PLACES ADVISORY PANEL

Date of meeting: 27th January 2009
Report of: Nicky Folan
Title: Planning Protocol

1.0 Purpose of Report

- 1.1 This report attaches as Appendix 1 a proposed Planning Protocol for the consideration of planning matters. The Advisory Panel are asked to review and comment on the proposed Protocol.

2.0 Decision Required

- 2.1 That the Advisory Panel considers the Planning Protocol and recommends it for adoption by the Council

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 There is a risk of legal challenge if robust and consistent procedures are not in place and Councillors are not fully informed as to how they should act in carrying out their duties relating to the consideration of planning matters.
- 5.2 There is also a risk of Local Government Ombudsman complaint being upheld if the Authority does not provide clear and consistent advice to Councillors.

6.0 Risk Assessment

- 6.1 A number of risks can be identified:
- Generally, a lack of advice aimed at ensuring the integrity of the planning system for those Councillors involved as Members of the Board/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
- Confusion amongst Councillors and members of the public over membership of Parish Councils and outside bodies and the effects this membership may have on the planning process and their involvement in it
- lack of, or inconsistent, 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 appropriate advice, control and management of site visits
- lack of general advice to Councillors on their involvement in the discussions concerning the benefits which may stem from particular development proposals through planning obligations
- 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.

6.2 The protocol does address each of these risks.

7.0 Background and Options

- 7.1 Currently both Congleton Borough Council and Macclesfield Borough Council have comprehensive Councillors' planning protocols as part of their respective Council Constitutions. The County Council has a protocol that applies only to site visits.
- 7.2 It is essential that Councillors are aware of, and understand the constraints which they will have to operate within as part of their involvement in the development management process, and in particular in dealing with planning applications. This is in order to protect themselves and the Council from any challenge that may be made by a disgruntled member of the public, applicant or objector. It is also important that the planning system is seen to operate in a fair and open way.
- 7.3 A planning protocol provides consistent guidance for Councillors in dealing with planning applications and a useful reference document for

them when dealing with situations that can arise during their day to day functions as a Councillor. It also provides a source of information for members of the public to help them understand the operation of the planning system and the Councillors involvement in such.

7.4 It is necessary that this protocol is in place prior to 1 April 2009 so that Cheshire East Council determines applications in a robust and consistent manner and that a quality service is delivered to all customers.

7.5 The Planning Protocol deals with the following matters:

1. Relationship to the Members Code of Conduct
2. Development Proposals and Interests under the Members Code
3. Fettering of Discretion in the Planning Process
4. Membership of Parish Councils and Outside Bodies
5. Cabinet Members
6. Contact with Applicants, Developers and Objectors
7. Lobbying of Councillors
8. Lobbying by Councillors
9. Site Visits
10. Public Speaking at Meetings
11. Officers
12. Decision Making
13. Training
14. Involvement in Section 106 Agreements
15. Monitoring and Review
16. Breaches of the Planning Protocol

7.6 This Planning Protocol is to be presented to the Development Management Task Group on the 21st January 2009, and their comments will be reported to the Places Advisory Panel orally at the meeting.

8.0 Overview of Day One, Year One and Term One Issues

8.1 The adoption of a Planning Protocol is a day one issue. It can then be reviewed and amended as necessary throughout or at the end of year one.

9.0 Reasons for Recommendation

9.1 It is vital that a Planning Protocol is in place as part of the new Council's Constitution prior to vesting day. This will provide clear guidance to Councillors in the undertaking of their roles and responsibilities in respect of their consideration of planning applications and other matters.

For further information:

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Background Documents:

Congleton Borough Council Protocol of Conduct in relation to planning functions

Macclesfield Borough Council Planning Protocol

Cheshire County Council protocol for Committee Site Visits for Planning Applications

Documents are available for inspection at:

At each of the respective Councils, or via each authorities Website

APPENDIX 1

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 Code 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.

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 the Borough, 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 control 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.**

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 MEMBER'S 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 officer 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.
- 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 discussed however please see paragraph for your right to attend and make representations.
 - **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 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 Board/Committee 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 committee (*where appropriate.*)
- you do have a right to make written representations to officers about the proposal and may address the Board/Committee pursuant to the Public Speaking Protocol subject to certain additional restrictions (see para 11 below for more detailed advice on this point).

4 FETTERING DISCRETION IN THE PLANNING PROCESS

Given the requirement that Members of the Board/Committees 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 Board/Committees.

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.
- 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 not** use any political group meetings prior to the Panel 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 decisions can only be taken after full consideration of the Planning Officer's report and information and consideration at the Board/Committees meeting.
- 4.6 **Don't** speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- 4.7 **Do** explain that you do not intend to speak and vote 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.
- 4.8 **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member *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 :

- advise the proper officer or Chairman that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

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 prejudicial interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of :
 - (a) another local or public authority or 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.

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 Board/Committees 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 Board/Committees; and

- you disclose the personal interest regarding your membership or role when the Board/Committees come 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 Board/Committees 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 on any matter which you have discussed at Cabinet unless you have demonstrated there and can do so at the relevant Board/Committees that you have not predetermined the application.
- 6.2 **Do not** take part in any meeting of the Board/Committees on a matter in which you may have been seen as advocating a proposal as a Cabinet Member.

7 CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

It is recognised that pre-application discussions can be of great benefit to the planning process provided that they take place within clear parameters and governance arrangements.

- 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. 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, 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 Board/Committees.

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 Board/Committee 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.

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 Committee's 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.
- 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;
 - 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 Board/Committee meetings so that Councillors 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 the views it holds. If the Board/Committees are 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 Chairperson or a member of the Board or Committee, 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 issue 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 Committee 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 VISITS

Site Visits 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 Board/Committees. It should be noted that this Section applies to Councillors requests for a Site Visit and that the Head of Planning and Policy may arrange Site Visits without prior discussion at the Plans Panel 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 Board/Committee Councillors will attend all formal site visits and a record of attendance will be maintained and monitored.

10.1 **Do** try to attend site visits organised by the Council where possible.

10.2 **Don't** request a site visit 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 Board/Committee; 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 visit is reported back to the Board/Committees, so that all Councillors have the same information.

10.4 **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.

10.5 **Do** ask the officers at the site visit 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 Board/Committee 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.

10.8 **Don't** enter a site, which is subject to a proposal other than as part of an official site visit, 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 visit;
- you have first spoken to the Corporate Manager (Planning and Development) (Chief Planning Officer) 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 visits.

11 PUBLIC SPEAKING AT MEETINGS

11.1 **Don't** allow members of the public to communicate with you during the Committee's 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 procedures in respect of public speaking.

11.3 All Councillors are entitled to speak at a Board/Committee meeting in accordance with the Public Speaking procedures 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.

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.
- 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 Committee or its Councillors
- 12.4 **Do** be aware of the Protocols on Member/Officer Relations and the Roles of Councillors and Officers in Decision Making.

13 DECISION MAKING

- 13.1 **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Board/Committee.
- 13.2 **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- 13.3 **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- 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 debate, including the officers' introduction to the matter.
- 13.6 **Do** have recorded the reasons for the Board/Committee'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 Board/Committee 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 Board/Committee.
- 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 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 Board/Committee wish to approve against Officer recommendation at the next meeting of the Board/Committee to allow Officers to formulate appropriate conditions and provide the Board/Committee with any relevant further information.

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.
- 14.3 **Do** revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, thereby strengthening public confidence in the planning system, and can help with reviews of planning policies.

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 Board/Committees, whether you are a Member of the Committee 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 Planning Protocol 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 Councillors may be referred to the Monitoring Officer for referral to the Standards Committee, the relevant Leader and/or Chief Whip of the political group.