

Council

20 April 2021

Constitutional Changes - Planning Arrangements

Director, Place

Relevant Portfolio Holders: Planning Policy & Culture and Community and Governance

Purpose

To report on proposed changes in respect of procedures and protocols relating to the consideration of planning applications.

To **RECOMMEND TO COUNCIL** that -

subject to the views of the Development Control Committee and the Neighbourhood Committees:

1. the revisions to Part 3A of the Constitution, Responsibility for Functions, in respect of the Neighbourhood Committees and Development Control Committee as set out at **Annexes 1 and 2** respectively, and the revised Planning Protocol including Planning Procedure Rules at **Annex 3** be approved;
2. Part 4A of the Constitution, Meeting Procedure Rules, be amended to cross reference with the detailed Planning Procedure Rules referenced in 1) above; and
3. the Monitoring Officer be authorised to make any further consequential minor changes arising from these proposals as may be required in consultation with the Portfolio Holders for Planning Policy & Culture and Community and Governance.

Benefits to the Community:

Reviewing and updating the Constitution on an annual basis assists in underpinning good corporate governance and enables the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations, supporting the active involvement of citizens in the process of Council decision making.

Key Points

- A. A review has been conducted of the procedures around the determination of planning applications, particularly strategic applications, in order to facilitate better engagement with those committees with planning related functions.
- B. The proposals set out in this report, have been considered by each Neighbourhood Committee and the Development Control Committee during January 2021, prior to submission to Council on 20 April 2021. Amendments and clarifications have been made as a response to comments and recommendations resulting through the dialogue with the respective committees and are identified as the blue text in the report, annexes and appendices.

- C. It is recommended that the Constitution is amended as detailed in **Annexes 1 to 3** so that the Council as Local Planning Authority is able to function in a more efficient and effective manner whilst optimising the involvement of Planning Committee members in the determination of planning applications for strategically important developments.

Proposals for Change

1. As set out in the Key Points, a review has been conducted of the procedures around the determination of planning applications, particularly strategic applications.
2. In the context of this report, "Planning Committees" refers collectively to the Development Control Committee and each of the Neighbourhood Committees.
3. It should be noted that the term Development Control is outdated with Development Management now generally being used instead. It is therefore proposed that the Development Control Committee (DCC) be retitled the Planning Committee in line with most such Committees elsewhere. However, for ease of reference in this report, the Committee will still be referred to as DCC.

Terms of Reference of Planning Committees

4. Details of proposed changes in respect of the Terms of Reference of the Planning Committees are set out in the following paragraphs. These, together with some minor corrections and consequential changes, are reflected in re-drafts of Part 3A of the Constitution (Responsibility for Functions) in respect of the Development Control Committee and the Neighbourhood Committees attached at **Annexes 1 and 3** respectively.
5. The essential split between the work of the Planning Committees is that Major applications go to DCC (as it is currently known) and other applications go to a Neighbourhood Committee. What constitutes a Major application is defined by the Government. This is a sensible arrangement and it is not proposed that it be altered.
6. The terms of reference of the DCC Committee need to be amended to make specific provision for the facilitation of the presentation of applications in the pre-application or pre-determination stage to the Committee.

Application Types

7. The existing provisions refer to "planning applications", which has a broad meaning and is probably not intended to refer to, for example, Applications for Lawful Development Certificates or Certificates of Appropriate Alternative Development as these are basically legal processes involving no planning judgement. It is proposed that the term "Applications for Planning Permission" be used instead because it has a precise legal meaning and matches the likely intent behind the existing text.

Decision Types

8. The current arrangements generally only require recommendations for approval

to go to Committee. This is sensible and should continue. It is very useful for Officers when negotiating applications where the applicant is refusing to move on an issue to have the ability to say, “you can have the refusal by close of play”. Where refusals are controversial (which is very rare and hard to define) the Assistant Director Strategic Planning and Infrastructure (“the AD”) can use his or her discretion and report the matter to Committee.

9. The other important factor is that an aggrieved applicant has a right of appeal, so has the ability to challenge the decision. No significant changes are therefore proposed but the text has been redrafted for clarity. [However, it is proposed that any refusal of a major development would be finalised in consultation with the Chair of the Planning Committee.](#)

Petitions & Pro-forma letters

10. Petitions and multiple objections received from a single property, will continue to be treated as forming a single objection for the purposes of deciding whether they will trigger consideration by Committee. Pro-forma letters (a letter or email that has been produced and distributed for people to sign, or reproduce and sign, and send to the Council) should also henceforth be treated collectively as forming a petition rather than being treated as individual objections for the purposes of deciding whether they will trigger consideration by Committee.

[Objections](#) [\(for the purposes of deciding whether they will trigger consideration by Committee - for the avoidance of doubt all relevant representations will be recorded in the officer report.\)](#)

11. There is a need to more clearly define what constitutes a valid objection in order to avoid legal challenges. It is recommended that it be made clear that an objection is a letter, email or a petition from any party (Councillor, local resident, business etc) that meets all the following requirements:
 - It is in response to an application that has been publicised or advertised by the Council;
 - It is not anonymous and includes the person’s name and postal address;
 - It is from, or on behalf of, a person who lives at, operates from an address which is within the Borough or is the owner or occupier of a property that is outside the Borough but adjoins an application site;
 - It is received by the Planning Service within the statutory consultation period. [For the purpose of Call-ins by relevant Ward Members this would be the statutory consultation period plus 7 days;](#)
 - It raises objections that are material planning considerations and are related to the application, and
 - Any material planning objection raised cannot be overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s) in consultation with the Chair.

Call-Ins

12. An application may be 'called-in' to Committee at the request of all the relevant Ward Members. In practice this relates only to Neighbourhood Committees as matters are presented to DCC by virtue of their size, irrespective of whether there are objections or call-ins. The Chair of Neighbourhood Committees have call in powers. If an application meets with an objection from the Chair/ Vice Chair of Conservation Area Advisory Committees the application is referred to the Chair of the Neighbourhood to ascertain whether the Chair of the Neighbourhood wishes to call-in the application.
13. The existing provisions require Ward Members to include in their call-in request 'objections on the basis of material planning grounds'. However, if the Ward Member sits on the Committee which determines an application they have called in there is a risk of challenge relating to predetermination because of the nature of the objection. It is therefore proposed to remove the requirement to raise material planning considerations in such circumstances. This enables Members to request that an application be called in without requiring a commitment to a particular position.

Neighbourhood Committees

14. It is important that the Development Plan is applied consistently across Neighbourhood Committees and that the Committees have the ability to deal with vexatious objectors or call-ins.
15. The agreement of both the AD and the Chair of DCC is presently needed to approve the call-in of an application to a Neighbourhood Committee by the Neighbourhood Chair. It is proposed that this should now only need the agreement of the DCC Chair in consultation with the AD. The other criteria that trigger Neighbourhood consideration: five or more Objections and Ward members' Objection should be subject to a similar gatekeeping arrangement operated by the Chair of the Neighbourhood committee in consultation with the AD.
16. When this gatekeeping function is exercised by the Chair of DCC or a Neighbourhood Committee it is important that it is open and transparent. This could be achieved by listing all such instances with the related reasons why the power was exercised on the next available DCC Agenda. The operation of this arrangement is detailed in the proposed operational rules for the Planning Committee (**Annex 3** refers).
17. Regarding Enforcement matters, although in practice these rarely go to Neighbourhood Committees, it is proposed that in line with common practice elsewhere, the taking of enforcement action be delegated to Officers. Officers need to be able to proceed quickly under delegated powers to take action against unauthorised development. The contravener's rights are protected through a right of appeal against any Notice served by the Council. [Quarterly reports detailing relevant enforcement cases will be reported to Neighbourhood Committees regarding whether action has been taken or not.](#)
18. Finally, there are three circumstances where it is recommended that matters that might otherwise go to a Neighbourhood Committee should be put before DCC. These are:

a) Departures from the Development Plan

Neighbourhood Committees are not allowed to take decisions which are contrary to Council policy (which would include the Development Plan). Currently, the drafting of the Terms of Reference are ambiguous. It is proposed that the ambiguity be removed with more precise drafting. It will be made clear that if the decision constitutes a “Departure” (a term that has a legal definition in planning and means a decision which is contrary to policy but in a substantial or significant way) the matter must go to DCC. Neighbourhood Committees will be able to make decisions that are not fully compliant with policy, but not if the non-compliance is so substantial that it constitutes a Departure.

It is also important to note that decisions which have implications for more than one neighbourhood, have financial implications or are highly controversial should also go to DCC if the matter needs to be determined by Committee.

b) The Council’s own developments in certain circumstances

At present the Council’s own developments are routinely presented to Committee, however this is not always deemed necessary in every case. It is proposed that where there are no objections or Call-In and the application is compliant with the Development Plan the matter can be determined by Officers under delegated powers. In all other circumstances the application would be routed through DCC in order to maintain transparency.

Where the Council is not itself the developer but it wants to obtain planning permission so it can sell the land no delegations will apply and all applications reserved to DCC.

c) Applications submitted by Councillors and some officers

Similarly, it is proposed that henceforth applications by Members and Officers need not necessarily all be routed through Committee. For transparency purposes, provision needs to be made to ensure that applications submitted by Members and key Officers are determined by DCC. However, this can be limited to circumstances where the applicant is a senior officer (i.e. Service Head and above), Political Group Officer or an Officer who, in the opinion of the AD, is closely involved in the day-to-day work of the Council’s planning function, or an elected Member (or a close relative of such), the recommendation is to grant approval *and* an objection has been received or the proposal does not fully comply with the Development Plan.

Planning Protocol and Operation of the Planning Committee

19. The existing Planning Protocol (Part 5D of the Constitution) seems to follow the Local Government Association’s (LGA) model code produced in 2009. There have been several subsequent changes to the legislation (eg Localism Act 2011) and the rules that sit behind such codes. The LGA therefore issued a new model code in 2013 and a further update in 2019. RBK’s Protocol needs to be updated to reflect the latest position.

20. The new Protocol, based on the latest LGA 2019 model code, will cover the following areas:
- Aim of the Protocol
 - Role and conduct of Councillors and officers
 - Interests: registration and disclosure
 - Bias: predisposition/predetermination
 - Applications submitted by the Council, Councillors or officers
 - Lobbying of and by Councillors
 - Pre-application discussions
 - Post-submission discussions
 - Planning appeals
 - Planning enforcement
 - Councillor training
21. In the context of DCC receiving presentations of development proposals in the pre-application stage, it is also necessary to set out the probity advice for this as an additional element in the Planning Protocol.
22. It is proposed that this new Protocol replaces in its entirety the current “Planning Protocol” in Part 5 of the Constitution: Codes and Protocols and is set out at **Annex 3**.
23. The review also identified a number of areas where procedures in Planning committees need to be amended and should be clearly set out and adhered to. These procedure rules are by their nature detailed.
24. Specific to the operation of planning committees are:
- Ordering of the committee agenda in the context of Presentations.
 - The operation of the Chair’s gatekeeping function.
 - Pre-committee matters, such as site visits.
 - The protocols around the wording of recommendations, delegations to officers if there is a need to change that wording either as a result of changes by committee or subsequently due to unforeseen circumstances.
 - Procedures and deadlines for Late Material.

- Public speaking procedures.
 - The sequence of events (officer presentation, public speaking etc) for each agenda type.
 - Advice on decision making and the need for committee councillors to be in attendance for an item that they are voting on.
 - Clarity around the voting procedures, particularly when the committee is minded to go against officer's advice or if such a decision would be a Departure.
 - The delegation to officers to finalise the wording of committee decisions ensures that any changes do not deviate from the overall principle of the decision reached by the committee or could reasonably have led to a different decision having been reached by the committee.
 - The approach to minutes is clarified to reduce the risk of judicial review.
25. These key amendments and additions to the constitution will enable the process of all planning committees to run smoothly and minimise the risk of a successful challenge to decisions.
26. These rules are necessarily detailed and it is proposed that they are set out in Part 5D together with the Planning Protocol (**Annex 3**) and will be cross-referenced in Part 4(A) of the Constitution with the addition of a procedure rule similar to that in relation Petitions (Procedure Rule 7).

Timescale

27. The proposals contained within this report will be submitted to Council on 20 April 2021 for approval. The changes would then come into effect from the commencement of the municipal year in May 2021.

Resource Implications and Financial Context

28. Whilst the proposals contained in this report have no direct resource implications, everything the Council does needs to be seen in the context of an increasingly challenging financial environment.
29. Kingston is not alone in its challenges, one in three of all councils fearing they will run out of funding to carry out their legal duties by 2022/23. However, this position is particularly stark in Kingston. The demand for services is increasing while the funds available to meet these needs continues to fall.
30. In 2010 the council received £66m in government grant - by 2018 that had been cut to zero. This means that it is a continual challenge to find adequate funds to meet needs. Despite these challenges the Council has a drive and commitment to ensure it is doing the best for residents and communities.

Legal Implications

31. There are no legal implications arising from the proposals in this report. The proposed amendments to the delegations in respect of the Council's discharge of its functions as local planning authority are within its statutory powers, in particular as contained in section 101 of the Local Government Act 1972.

Risk Assessment

32. Not applicable to the subject matter of this report.

Equalities Analysis

33. An EQIA has not been undertaken in relation to this report. An EQIA was undertaken when the Constitution was reviewed in October 2019 and no policy changes affecting this assessment are being proposed.

Health Implications/Road Network Implications/Sustainability Implications

34. Not applicable to the subject matter of this report.

Background papers - None

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ANNEX 1

EXTRACT FROM PART 3A RESPONSIBILITY FOR FUNCTIONS

(NOTE: Changes to the existing provisions indicated by text struck through and in red)

3. Neighbourhood Committees

- 3.1 Details of the Neighbourhood Committees structure are set out in Article 9 of the Constitution and the functions for which Neighbourhood Committees are responsible are set out below. Each Neighbourhood Committee comprises of the Councillors representing the electoral wards within the Neighbourhood.
- 3.2 The role of the Neighbourhood Committees broadly comprises three distinct but complementary elements:
1. to exercise the formal powers and duties of the Council in respect of certain services and functions;
 2. to support and complement the work of the Strategic Committees and;
 3. to use their positions of leadership and influence to actively engage with and empower the respective local communities and build capacity and resilience within them.

Powers

- 3.4 Any decision which affects a single Neighbourhood Committee area may be taken by the relevant Neighbourhood Committee provided that:
- The decision is within Council's budget and policy framework;
 - They are within Council policy / there is no conflict with Council policy;
 - The impact of the decision extends no further than the boundaries of relevant Neighbourhood area;
 - Any financial implications of decisions taken are capable of being contained within the approved budget;
 - They do not involve matters of a highly controversial nature as identified by the Chief Executive in consultation with the Chair of the Neighbourhood Committee concerned.
- 3.5 Where a decision has a cross boundary impact on part of another Neighbourhood Committee area it will be taken by the Committee in the area in which the decision has the greatest impact subject to consultation with the secondary Committee. Where the effect of the impact is broadly equal the Monitoring Officer shall determine the appropriate decision maker in consultation with the Chairs of the relevant Neighbourhood Committees.
- 3.6 The following powers and duties are specifically reserved to Neighbourhood Committees:
1. To be responsible for the development and approval of Local Community Plans containing priority topics or issues identified through consultation and engagement on the local area and local population. Local Community Plans provide clear priorities, appropriate project workstreams and identify potential

funding to be allocated for the Neighbourhood Committee's decision or recommendation to relevant Strategic Committee.

2. To make recommendations to Strategic Committees in relation to issues which impact on the Neighbourhood Committee Community Plan.
3. ~~To be responsible for the determination of Development Control applications in respect of-~~ To exercise the functions, powers and duties of the Council in relation to Development Management (except where it is a matter reserved for Planning Committee: see 3.9 below) with respect to recommendations to approve Applications for Planning Permission¹ where one of the following circumstances apply
 - ~~a. A minor planning application for development which is contrary to Council policy unless it is intended to refuse the application.~~
 - ~~b. Planning applications for development where there is significant local public concern (defined as 5 or more objection from separate addresses, who have objected in writing raising material planning considerations) unless it is intended to refuse the application AND the relevant Chair or Vice-Chair requests that the application be considered at Committee.~~
 - ~~c. Where the Chair of the relevant Neighbourhood Committee requests, on material planning grounds, that the application be considered at Committee and both the Assistant Director Strategic Planning and Infrastructure and the Chair of the Development Control Committee agree that it is appropriate to do so.~~
 - ~~d. Where all relevant ward Members have, within 28 days of the date an application is deemed to be valid, submitted requests in writing raising objections on the basis of material planning grounds.~~
 - ~~e. Applications submitted by or on behalf of the Council or where the Council has an interest in the land where the objection(s) have been received or where the Committee Chair has requested that it is determined by committee.~~
 - ~~f. Any application which falls within a Conservation Area and to which the relevant Conservation Area Advisory Committee resolves to object where it is intended to approve the application and the relevant Chair or Vice-Chair requests that the matter be considered by the Committee.~~
 - ~~g. Any application which in the view of the Assistant Director of Strategic Planning & Infrastructure is in the public interest should be considered by the relevant Committee.~~
 - a. Five Objections (see definition below) to the application have been submitted and the Chair of the Neighbourhood Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.
 - b. Where the Chair of the relevant Neighbourhood Committee has submitted a Call-In Request (see definition below) and the Chair of the Planning Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration;
 - c. Where all Councillors of the ward within which the application is located or adjoins have submitted a Call-In Request (see definition below) and the Chair of the Neighbourhood Committee, in consultation with the Assistant

¹ Full Planning Applications (including Householder applications) and Outline Planning Applications

Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration; or

- d. An application which falls within a Conservation Area and to which the relevant Conservation Area Advisory Committee has submitted a Call-In Request (see definition below) and the Chair of the Neighbourhood Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.

4. Any planning matter which the Assistant Director of Strategic Planning & Infrastructure wishes to refer to the Committee.

3.7 An Objection is a Public Access Comment response, email, letter or petition that meets all the following requirements:

- It is in response to an application that has been publicised or advertised by the Council;
- It is not anonymous and includes the person's name and postal address;
- It is from, or on behalf of, a person who lives at or operates from an address which is within the Royal Borough of Kingston upon Thames;
- It is received by the Planning Service within the statutory consultation period;
- It raises objections that are material planning considerations² and are related to the application, and
- If in the opinion of the Assistant Director of Strategic Planning and Infrastructure, in consultation with the relevant Chair, a material planning objection is overcome by scheme amendment, imposing planning condition(s) or securing planning obligation(s), such an objection no longer counts towards the circumstances that trigger Committee consideration. However, the objection will still be recorded in the Officer Report. A quarterly update detailing when this provision has been used will be provided to the Neighbourhood Committee.

If several objections are received from a single property, they will be treated as a single Objection for the purposes of deciding whether they will trigger consideration by Committee. For the avoidance of doubt all representations received will be reported in the Officer Report.

Pro-forma letters (an Objection that has been produced and distributed for people to sign, or reproduce and sign, and send to the Council) will be treated collectively as forming a Petition rather than being treated as individual Objections.

Petitions are treated as forming a single Objection.

3.8 A Call-In Request is a Public Access Comment response, email or letter from a Councillor or a Conservation area Advisory Committee Chair/Vice-Chair that meets all the following requirements

- It is in response to an application that had been publicised or advertised by the Council

² Examples of which are set out on the Planning Pages of the Council's Website

- It is received by the Planning Service within the statutory consultation period; ~~and~~ For the purpose of Call-ins by relevant Ward Members this would be the statutory consultation period plus 7 days; and
- It must contain a specific written request for the application to be considered at Committee

3.9 The following matters are specifically reserved to Planning Committee:

- Applications for Planning Permission for a Major development³ (as defined in the Town and Country Planning (Development Management Procedure) (England) Order.
- The decision would not accord with the provisions of the Development Plan and, in the opinion of the Assistant Director Strategic Planning and Infrastructure, constitutes a Departure.
- The Council is the applicant.
- The applicant is an elected member, one of the officer categories specified in the Planning Committee's Responsibility for Functions or a close relative of either of these.
- Where, in the opinion of the Assistant Director Strategic Planning and Infrastructure, the decision would raise issues that are wider than the neighbourhood, have financial implications or be highly controversial.

~~3.7 To determine planning enforcement action in respect of planning decisions by either the Development Control Committee or the Neighbourhood Committee unless the Chair of the relevant Neighbourhood Committee, the Corporate Head of Planning and the Chair of the Development Control Committee agree that it is appropriate for the matter to be referred to the Development Control Committee.~~

- 3.10 To approve or reject schemes associated with all forms of parking controls which are contentious, and where objections cannot be resolved by negotiation.
- 3.11 To approve traffic management schemes on all roads other than A roads and strategic routes managed by Transport for London, where objections cannot be resolved by negotiation.
- 3.12 To make appointments to Outside Bodies operating solely within the relevant Neighbourhood.
- 3.13 To establish Sub committees for the purpose of determining ~~planning applications and planning enforcement action~~ Applications for Planning Permission reserved for determination by a Neighbourhood Committee and agree their composition and ~~working arrangements~~ frequency.
- 3.12 To determine whether the allocation of Ward Councillor funding for the Neighbourhood Committee area is to be pooled across the entire Committee.
- 3.13 To be **formally** consulted on any major regeneration schemes in the Neighbourhood Committee area ~~following a request by the Chair of the Neighbourhood Committee.~~

³ "major development" means development involving any one or more of the following— (a) the winning and working of minerals or the use of land for mineral-working deposits; (b) waste development; (c) the provision of dwellinghouses where— (i) the number of dwellinghouses to be provided is 10 or more; or (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i); (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (e) development carried out on a site having an area of 1 hectare or more;

- 3.14 To be consulted on a draft Development Plan Document (or revision to a Draft Development Plan Document) before it is submitted to the Secretary of State.
- 3.15 To be **formally** consulted on the scoping of Supplementary Planning Documents at the pre-~~application-consultation~~ stage following a request by the Chair of the Neighbourhood Committee.
- 3.16 To be consulted on the Local Implementation Plan (LIP) programme before it is submitted to Transport for London.
- ~~3.16 To be consulted on a draft Development Plan Document (or revision to a Draft Development Document) before it is submitted to the Secretary of State.~~

Allocation of Funding

- 3.17 The Neighbourhood Committee will have access to certain funding streams to award projects, events and activities which provide a benefit to the neighbourhood area based on the allocation recommended by Finance and Contracts Committee to include (but not exhaustively) the following funding streams:
- Community **Interest Infrastructure** Levy (CIL) funding;
 - Community Funding Grants; and
 - Ward Councillor Funding (allocation of up to £2,000 per Councillor in each Neighbourhood). Ward Councillor funding may be pooled or used by individual Councillors, to be decided upon and at the discretion of each individual Neighbourhood Committee's arrangements each municipal year.

Influence and Engagement

- 3.18 In addition to the exercise of its formal powers and duties Neighbourhood Committees provide an effective mechanism for representing the interests of local communities. As such they may be involved in the following activities (this is not an exhaustive list):
- a) Consultee on the development of council wide strategies and policies
 - b) To comment on proposed specifications for any Borough wide contracts where service delivery is likely to impact on the Neighbourhood and to monitor performance of the contractor where appropriate
 - c) To promote and support Local health provision, campaigns and GP engagement and to promote, support and engage with public health services to achieve greatest benefit to residents
 - d) To engage with partner and voluntary sector organisations on issue affecting the Neighbourhood Committee area

ANNEX 2

PART 3A RESPONSIBILITY FOR FUNCTIONS

(Changes to the existing provisions indicated by text struck through and in red)

4.2 **Planning Committee**

Membership

4.2.1 Eleven Members of the Council

Functions

4.2.2 The Committee has concurrent reserve powers with Neighbourhood Committees to enable it to deal with any planning **application matter** that an individual Neighbourhood was unable to deal with for whatever reason (e.g. where a substantial number of Neighbourhood Councillors have a prejudicial interest in a matter).

- ~~1. The exercise of the Council's Development Control responsibilities in respect of the following categories of planning application. (Formal consultation shall take place with Neighbourhood Committees prior to the exercise of these powers in those circumstances where the Head of Planning and Transport, in consultation with the Chair of the Development Control Committee and the Chair of the relevant Neighbourhood Committee, considers it appropriate)~~
 - ~~a. In relation to development of such classes as the Development Control Committee may from time to time determine shall be the subject of recommendations to them including major developments involving the construction of more than 10 new dwellings or more than 1,000 sq metres of non-residential floorspace other than applications under section 73 of the Town and Country Planning Act 1990 for variation of conditions to an existing planning permission where the substance of the changes are such that they would otherwise be dealt with by Officers under delegated powers.~~
 - ~~b. A major planning application for development which is contrary to Council policy unless it is intended to refuse the application other than applications under section 73 of the Town and Country Planning Act 1990 for variation of conditions to an existing planning permission where the substance of the changes are such that they would otherwise be dealt with by officers under delegated powers.~~
 - ~~c. Any application which, in the view of the Head of Planning, is in the public interest that it should be considered by the committee.~~
 - ~~d. Where the Head of Planning considers that an application should be refused where such a decision will result in the Council being made liable for a payment of compensation, save in the case of~~

~~development which would have been permitted development but for an Article 4 direction.~~

1. To exercise the functions, powers and duties of the Council in relation to Development Management and other related planning matters.
2. Consultation shall take place with the relevant Neighbourhood Committee prior to the exercise of these powers in those circumstances where the Assistant Director Strategic Planning and Infrastructure, in consultation with the Chair of Planning Committee and the Chair of the relevant Neighbourhood Committee, considers it appropriate to do so.
3. The Assistant Director Strategic Planning and Infrastructure may bring presentations of developments, that are intended to be submitted as Applications for Planning Permission but are in the pre-application stage or such applications that are in the pre-determination stage, to the Committee.
4. Recommendations to approve Applications for Planning Permission where one of the following circumstances apply (Consultation shall take place with the Chair of the Planning Committee prior to issuing a refusal of an application for a Major Development):
 - a. Major Developments (as defined in the Town and Country Planning (Development Management Procedure) (England) Order), other than applications under section 73 of the Town and Country Planning Act 1990 for the variation of conditions on an existing planning permission where the substance of the changes are such that they would otherwise be dealt with under delegated powers;
 - b. The decision would not accord with the provisions of the Development Plan and, in the opinion of the Assistant Director Strategic Planning and Infrastructure, constitutes a Departure;
 - c. The Council is the applicant and either:
 - it is for the development of land in its ownership that the Council intends to grant to a third party any form of right or interest over that land; or
 - in any other case where there is a single Objection (as defined in the responsibility for Functions for Neighbourhood Committees), or the proposal does not comply with the Development Plan; or
 - In any other case, there is a Call-In Request (as defined in the responsibility for Functions for Neighbourhood Committees) and the Chair, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate for Committee consideration.
 - d. The applicant has indicated on the 1APP Application Form that they are:
 - an elected member;
 - a senior Officer of the Council (Service Head and above);
 - a Political Group Officer;

- an officer of the Local Planning Authority (see definition below); or
 - closely related to any of the above; and
 - an Objection (as defined in the responsibility for Functions for Neighbourhood Committees) has been received;
 - the proposal does not fully comply with planning policy; or
 - There has been a Call-In Request (as defined in the responsibility for Functions for Neighbourhood Committees).
- The term “Officer of the Local Planning Authority” means an officer within the Council who, in the opinion of the Assistant Director Strategic Planning and Infrastructure, is closely involved in the day-to-day work of the Council’s planning function.
5. Any planning matter which the Assistant Director Strategic Planning and Infrastructure wishes to refer to the Committee.
 6. The Committee may also consider and respond to consultations from external bodies, or the Strategic Committees, where the Chair, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers it appropriate to do so.
 7. The control of high hedges under Part 8 of the Anti-Social Behaviour Act 2003.
 8. To receive performance monitoring information on matters within the remit of the Committee.

Annex 3

New Part 5D Planning Protocol and Procedure Rules for Planning Committees

(Note: the following document REPLACES the current Part 5D in the Constitution)

Planning Protocol

1 INTRODUCTION

- 1.1 This Protocol has been prepared using advice in the Local Government Association's guidance note – Probity in Planning: advice for Councillors and Officers making planning decisions (December 2019).

Key Purpose of Planning

- 1.2 Planning has a positive and proactive role to play at the heart of local government. It helps Councils to stimulate growth whilst looking after important environmental areas. It can help to translate goals into action. It balances social, economic and environmental needs to achieve sustainable development.
- 1.3 The planning system works best when Councillors and officers involved in planning understand their roles and responsibilities and the context and constraints in which they operate.
- 1.4 Planning decisions are based on balancing competing interests and making an informed judgement against a local and national policy framework. In doing this, decision-makers need an ethos of decision-making in the wider public interest on what can be controversial proposals.

2 AIM OF THE PROTOCOL

- 2.1 In today's place-shaping context, early Councillor engagement is encouraged to ensure that proposals for sustainable development can be harnessed to produce the places that communities need. This guidance is intended to reinforce Councillors' community engagement role whilst maintaining good standards of probity that minimizes the risk of legal challenge.
- 2.2 Planning decisions can be controversial. The risk of controversy and conflict are heightened by the openness of a system which invites public opinion before taking decisions and the legal nature of the development plan and decision notices. Nevertheless, it is important that the decision-making process is open and transparent.
- 2.3 One of the key aims of the planning system is to balance private interests in the development of land against the wider public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. Opposing views are often strongly held by those involved. Whilst Councillors must take

account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they may appear to be doing so. It is important, therefore, that the Council makes planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons.

- 2.4 The process should leave no grounds for suggesting that those participating in the decision were biased or that the decision itself was unlawful, irrational or procedurally improper.

When the Protocol Applies

- 2.5 This Protocol applies to Councillors when they 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 consultative meetings. It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications. If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early from the Monitoring Officer, and preferably well before any meeting takes place.
- 2.6 This Protocol applies to all meetings of the Council's planning committees in relation to the determination of planning applications and any other planning business dealt with at these committees. When the term "Councillor" is used, it means that the text is applicable to all Members of the Council. The term "Planning Committee Councillor" means a Member or a substitute Member of the Council's Planning Committee or a Neighbourhood Committee dealing with a planning matter.

Relationship to The Members' Code of Conduct

- 2.7 Councillors are reminded that this Protocol is designed primarily for Planning Committee Councillors and Councillors who, for whatever reason, find themselves involved in the planning process. It should not be read in isolation. Whilst this Protocol interprets the Members' Code of Conduct with respect to planning matters, it is subordinate to the Members' Code of Conduct and, in the event of any inconsistencies arising between this Protocol and the Members' Code of Conduct, the latter shall prevail.

3 ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

General Roles of Councillors and Officers

- 3.1 Councillors and officers have different but complementary roles. Both serve the public. Officers are responsible to the Council as a whole, whilst Councillors are responsible to the electorate.
- 3.2 Officers are not appointed to serve any political group and therefore advise all Councillors. Officers carry out the daily functions of the Council's business in accordance with Council or Committee decisions or under powers delegated to them pursuant to the Constitution. Officers are governed by the Officers Code of Conduct contained in the Constitution. In addition, planning officers, who are Members of the Royal Town Planning Institute (RTPI), are subject to a

professional code of conduct and breaches may be subject to disciplinary action by the RTPI. Similarly, officers who are solicitors are subject to regulation by The Solicitors Regulation Authority. Officers in other professions will have corresponding codes.

- 3.3 The Localism Act 2011 sets out a duty for each local authority to promote and maintain high standards of conduct by Councillors and to adopt a code of conduct. The Members Code of Conduct in the Constitution is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. It embraces the standards central to the preservation of an ethical approach to Council business, including the need to register and disclose interests, as well as appropriate relationships with other Councillors, staff and the public. The Council's constitution sets down rules and orders which govern the conduct of Council business.

Relationship Between Councillors and Officers

- 3.4 Mutual trust, respect and understanding between Councillors and officers are the keys to achieving effective local government. A successful relationship can only be based upon mutual trust and understanding of each other's positions. This relationship, and the trust that underpins it, must never be abused or compromised.
- 3.5 Planning officers' views, opinions and recommendations will be presented based on 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.
- 3.6 Councillors must not put pressure on officers to put forward a particular recommendation or deal with a planning matter in a particular way. This does not prevent a Councillor from asking questions or submitting views to an officer. These views must be received in written form and be placed on the planning file, so that they can be considered together with other material planning considerations.

4 INTERESTS: REGISTRATION AND DISCLOSURE

- 4.1 A Councillor should refer to the Members' Code of Conduct for assistance in identifying Disclosable Pecuniary Interests or any Other Interests or seek advice from the Monitoring Officer prior to attending a meeting. A failure to properly register a Disclosable Pecuniary Interest or to participate in discussion or voting in a meeting on a matter in which a Councillor has a Disclosable Pecuniary Interest, are criminal offences. Ultimately, responsibility for fulfilling the requirements rests with each Councillor.
- 4.2 The provisions of the 2011 Act seek to separate interests arising from the personal and private interests of the Councillor from those arising from the Councillor's wider public life. Councillors should think about how a reasonable member of the public, with full knowledge of all the relevant facts, would view the matter when considering whether the Councillor's involvement would be appropriate.

- 4.3 Appendix B has a flowchart produced by the LGA to assist Councils with this. Appendix C gives examples of Disclosable Pecuniary Interests.

Registration of Interests

- 4.4 A Councillor must provide the Monitoring Officer with written details of relevant interests within 28 days of their election or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Councillor becoming aware of such changes.

Disclosure of Interests

- 4.5 It is always best to identify a potential interest early on. If a Councillor thinks that they may have an interest in a matter to be discussed at a Planning Committee, he or she should raise this with the Monitoring Officer as soon as possible.

Personal and Pecuniary Interests

- 4.6 The Council's Members' Code includes provision for declaration of interests that are wider than Disclosable Pecuniary Interests under the Localism Act 2011. Some personal interests may amount to pecuniary interests that impact on members' ability to participate and vote on that item.

Disclosable Pecuniary Interests

- 4.7 Where a Councillor has a Disclosable Pecuniary Interest relating to an item under discussion, the Councillor may not participate (or participate further) in any discussion of the matter at the meeting or participate in any vote (or further vote) on the matter. The Councillor should also withdraw from the committee room. This means that a Councillor with a Disclosable Pecuniary Interest is precluded from making representations orally to the committee or from making representations on behalf of a party to the hearing.

- 4.8 A Councillor with a Disclosable Pecuniary Interest can still present their views to the committee through other means. For example, the Councillor can:

- make written representations on a planning application in their private capacity – the existence and nature of the interest should be disclosed in such representations and the Councillor should not seek preferential consideration for their representations – such written representations should be addressed to officers rather than to other Councillors;
- use a professional representative to make a representation on the Councillor's behalf in circumstances where the Councillor's planning application is under consideration; or
- arrange for another Councillor (eg, a fellow ward Councillor) to represent the views of the Councillor's constituents on matters in which the Councillor has a Disclosable Pecuniary Interest.

- 4.9 Although a Disclosable Pecuniary Interest relating to an item under discussion requires the withdrawal of the Councillor from the committee, in certain circumstances, a dispensation can be sought from the Monitoring Officer to be present for that item of business.

- 4.10 Members should also have regard to the requirements regarding personal and pecuniary interests under the Code since these may also require a declaration of interest and may impact on members' ability to participate in an item.

5 BIAS: PREDETERMINATION/PREDISPOSITION

- 5.1 In addition to being aware and taking appropriate action in relation to interests, Planning Committee Councillors need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application, on planning policies or on other planning matters, such as enforcement. Avoidance of bias or predetermination or the appearance of bias or predetermination is a principle of natural justice that the decision maker is expected to adhere to.
- 5.2 The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a "closed mind" and likely to leave the committee's decision susceptible to challenge by Judicial Review. The latter is the perfectly normal process of someone making up their mind.
- 5.3 Clearly expressing an intention to vote in a particular way before a meeting (predetermination) is different from where a Councillor makes it clear that, although they have an initial view, they are willing to listen to all the material considerations presented at the committee and keep an open mind before deciding on how to exercise their vote (predisposition). The latter is acceptable; the former is not and may result in a Court quashing such a planning decision.
- 5.4 Section 25 of the 2011 Act provides that a Councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter. This enacted the common-law position that a Councillor may be predisposed on a matter before it comes to Committee, provided they remain open to listening to all the arguments and potentially changing their mind in the light of information presented at the meeting. Nevertheless, a Councillor in this position will always be judged against an objective test of whether the reasonable onlooker, with knowledge of the relevant facts, would consider that the Councillor was biased.
- 5.5 For example, a Councillor who states, "Windfarms are blots on the landscape and I will oppose each and every windfarm application that comes before the committee" will be perceived very differently from a Councillor who states, "Many people find windfarms ugly and noisy and I will need a lot of persuading that any more windfarms should be allowed in our area". The former has a closed mind and is predetermined, whereas the latter is predisposed but is maintaining an open mind.
- 5.6 This distinction is particularly important in the context of the Council's practice of facilitating presentations to Planning Committee by developers of schemes at the pre-application stage. After these presentations, Planning Committee Councillors question details of the development so that they can input into the design development of these strategic developments. They will therefore express views on aspects of the development (such as its external

appearance, impact on neighbours or transport network implications) which will display predisposition around these elements. What a Planning Committee Councillor should not do at this pre-application stage is to express a firm view on the development as a whole, as this could amount to predetermination. Such a view should only be formed at the end of the process, when all the material considerations are available to the Planning Committee Councillors to consider and weigh up before finalising their view.

- 5.7 The following diagram is produced to help Councillors appreciate the range of circumstances (the following is guidance only, any specific questions should be raised with the Council’s Monitoring Officer) :

| | | |
|----------|------------------|--|
| Lawful | No view | |
| | Predisposition | <ul style="list-style-type: none"> ● Manifesto pledges/commitments ● Policy making and setting |
| Unlawful | Predetermination | <ul style="list-style-type: none"> ● Clearly expressed intention to vote in a particular way on an individual application whatever the information provided |
| | Bias | <ul style="list-style-type: none"> ● Membership of an organisation that supports or opposes particular developments or development types |

Dealing with Lobbying

- 5.8 A Planning Committee Councillor who has been lobbied and wishes to support their constituents or is a Ward Councillor and wishes to campaign for or against a proposal, will need to consider whether this is likely to be regarded as amounting to bias and going against the fair determination of the planning application. If they have predetermined their position or have given that impression, they should avoid being part of the decision-making body for that application. A Planning Committee Councillor could speak at a Planning Committee (in accordance with the Council’s public speaking procedures) on behalf of their constituents, having declared their pre-determined position, but could not take part in the planning decision.
- 5.9 Participation as a Planning Committee Councillor where a Councillor is or may be perceived to be biased, in addition to the risk of a complaint against the individual Councillor, also places the decision of the Committee at risk from legal challenge. As such, if a Planning Committee Councillor considers that they are or have given the impression that they are biased or predetermined they must carefully consider whether it is appropriate for them to participate in the matter.

6 APPLICATIONS SUBMITTED BY THE COUNCIL, COUNCILLORS OR OFFICERS

Applications Submitted by The Council

- 6.1 Proposals for a Council's own development can give rise to suspicions of impropriety. It is perfectly legitimate for such proposals to be submitted to and determined by the Council. Proposals for a Council's own development will be treated no differently from any other application.
- 6.2 Certain Councillors may, through their other roles outside of a Planning Committee (eg a Portfolio Holder), have been heavily committed to or involved in a Council's own development proposal. In such circumstances, when an item comes to be considered at the Planning Committee, the Councillor concerned, if they sit on the Committee, must consider whether they have an interest or degree of involvement with the proposals that could give the impression of bias. If in doubt, they are encouraged to seek advice from the Monitoring Officer. The most appropriate course of action, if that is the case, is that the Councillor concerned may address the Committee in the applicant's speaking slot (see the Meeting Procedure Rules for Planning Committees) but does not take part in its consideration and determination. It is important that the Councillor should restrict their address to the Committee to relevant planning considerations rather than wider non-planning issues that are not material to the determination of the application.

Applications Submitted by Councillors or Officers

- 6.3 It is perfectly legitimate for planning applications to be submitted by Councillors and members of staff. However, it is vital to ensure that they are handled in a way that gives no grounds for accusations of bias or pre-determination.
- 6.4 If a councillor or an officer submits their own proposal to the Council which they serve, they should take no part in its processing. A Councillor who acts as an agent or representative for someone pursuing a planning matter with the authority should also take no part in its processing.
- 6.5 The Responsibility for Functions for Planning Committee and Neighbourhood Committees sets out the circumstances when applications submitted by councillors and officers must be determined by Planning Committee.
- 6.6 The procedures to be followed in Committee in such circumstances are as follows:
- The consideration in Committee of an application from a Councillor may be considered a Disclosable Pecuniary Interest for that Councillor and he/she will need to be mindful of their obligations in relation to Disclosable Pecuniary Interests as set out in the Members' Code of Conduct.
 - If such a Councillor does not have a Disclosable Pecuniary Interest, they may address the Committee as the applicant in accordance with the Council's public speaking procedures.
 - If such a Councillor has a Disclosable Pecuniary Interest they may not participate in the consideration of the matter and may therefore not speak

on the matter. They would need to have a representative speak on their behalf, unless they have received a specific dispensation for this purpose from the Monitoring Officer.

- The Planning Committee Councillors must consider whether the nature of any relationship means that they have a Disclosable Pecuniary Interest in relation to the matter and if so, they may not participate in the consideration of that matter.

6.7 The principle in the final bullet point also applies to an application submitted by a member of staff when it is considered in Committee.

7 LOBBYING OF AND BY COUNCILLORS

7.1 Lobbying is a normal part of the planning process. Those who may be affected by a planning decision, whether through an application, enforcement action, a site allocation in a development plan or an emerging policy, will often seek to influence it through an approach to their Ward Councillor or to a Councillor sitting on a relevant committee.

7.2 As the Nolan Committee's 1997 report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the Councillors themselves".

7.3 Lobbying, however, can lead to the impartiality and integrity of a Councillor being called into question, unless care and common sense are exercised by all the parties involved.

Lobbying of Councillors

7.4 A Planning Committee Councillor should explain to those lobbying or attempting to lobby them that, whilst they can listen to what is said, it may prejudice their impartiality and ability to participate in the Committee's decision making if they are asked to express either an intention to vote one way or another or such a firm point of view that it amounts to the same thing. Planning Committee Councillors should ensure that it is made clear to any lobbyists that they will only be able to reach a final decision on any planning matter after they have heard all the relevant arguments and looked at the relevant information during the sitting of the determining Committee.

7.5 Planning Committee Councillors should therefore:

- suggest to lobbyists that they write to the Planning Service in order that their views can be included in the officer report prepared for determination under delegated powers or by Committee;
- pass on any lobbying correspondence received (including plans, data, correspondence etc in respect of an application) to the Planning Service (development.management@kingston.gov.uk) as soon as practicably possible so that it can be considered and included in the report on the application;
- refer the matter to another ward member;
- remember that their overriding duty is to the whole community not just to the residents and businesses within their ward and that they have a duty to

- make decisions impartially and should not improperly favour, or appear to improperly favour, any person, company, group or locality;
- not accept gifts or hospitality from any person involved in or affected by a planning proposal, but if a degree of hospitality is unavoidable (eg, refreshments at a meeting), ensure that they comply with the provisions in the Members' Code of Conduct on gifts and hospitality; and
 - inform the Monitoring Officer where they feel that they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up where necessary.
- 7.6 Planning Committee Councillors should note that, subject to the requirements to ensure that they comply with the Members' Code of Conduct and the rules regarding bias and pre-determination and ensure that they take appropriate action in relation to Disclosable Pecuniary Interests, they are not precluded from:
- 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 predetermination and they make clear they 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 Councillor, provided they explain their actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward/local view, they have not committed themselves to vote in accordance with those views and will make up their own mind having heard all the facts and listened to the debate.
- 7.7 In the interest of openness, Planning Committee Councillors should declare any lobbying to which they have been subject.
- 7.8 It is very difficult to convey every nuance of these situations and to get the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual Councillor.

Lobbying by Councillors

- 7.9 Planning Committee Councillors should not become a Member of, lead or represent a national or local organisation whose primary purpose is to lobby to promote or oppose planning proposals. If a Councillor does, he/she may appear to be biased. Whilst they may be able to address the Committee as a Ward Councillor or an objector, they are not able to participate or vote on any matter in respect of which they have such an interest, unless they have received a specific dispensation for this purpose from the Monitoring Officer.
- 7.10 Planning Committee Councillors can join general groups which reflect their areas of interest and which concentrate on issues beyond particular planning proposals, but they should disclose a personal interest and consider whether that also amounts to a pecuniary interest where that organisation has made

representations on a particular proposal. Where a Planning Committee Councillor is able to participate, they should make it clear to that organisation and the Committee that they have reserved judgement and the independence to make up their own mind on each separate proposal.

- 7.11 Councillors should not excessively lobby Planning Committee Councillors regarding their concerns or views on a planning application, 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.
- 7.12 Councillors should not put pressure on officers for a particular recommendation or decision, and should not do anything which compromises, is likely to compromise, or could be seen as compromising the officers' impartiality or professional integrity. Nor should they request officers to speed up or delay the determination or assessment of an application for their own personal or political convenience or following lobbying by applicants, agents/advisers, local residents or other interested parties.
- 7.13 Call-in requests, whereby in certain circumstances all Ward Councillors, a Neighbourhood Committee Chair or a chair of a Conservation Area Advisory Committee can request a proposal that would normally be determined under officers' delegated authority to be determined by Committee, require the reasons for call-in to be recorded in writing and to refer solely to material planning considerations. A Ward Councillor or the CAAC Chair must additionally commit to attending the committee at which the application is to be determined, to explain their concerns. If they fail to do so on two or more occasions within a year, future call-in requests may not be accepted by the Chair of Planning Committee in exercise of his/her powers under the Responsibility for Functions. This is set out in the Meeting Procedure Rules for Planning Committees.
- 7.14 Planning Committee Councillors should not decide or discuss how to vote on any application at any sort of political group meeting or lobby any other Planning Committee Councillor to do so.
- 7.15 As previously outlined, Councillors must always be mindful of their responsibilities and duties under their Code of Conduct. These responsibilities and duties apply equally to matters of lobbying as they do to the other issues of probity explored elsewhere in this Protocol.

8 PRE-APPLICATION DISCUSSIONS

- 8.1 Discussions between a potential applicant and the Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged by the National Planning Policy Framework. However, it would be easy for such discussions to become, or to be seen by objectors to become, part of a lobbying process on the part of the potential applicant. For this reason, the Council have developed a pre-application process that enables engagement at the pre-application stage.
- 8.2 For major strategic applications, the Council offers a service to potential applicants, which includes presenting their schemes to the Council's Planning Committee. Details of this are set out in the Meeting Procedure Rules for

Planning Committees. This is the way in which Planning Committee Councillors engage with these schemes and there should therefore be no need to attend any other meeting with potential applicants or their agents/representatives.

8.3 For other application types, potential applicants may seek to meet Planning Committee Councillors. For minor or household applications, these can be treated as a form of lobbying and Councillors, including Planning Committee Councillors, should follow the advice set out above in section 7.

8.4 Where an application is more substantial, but not subject to a pre-application committee presentation, these meetings will be subject to the following procedures:

- No meeting involving Planning Committee Councillors shall be convened without the presence of a Council planning officer for the entire duration of the meeting.
- Understand that such meetings will attract a fee and make sure the applicant understands this.
- Both this Protocol and the Members' Code of Conduct will apply when attending such meetings.
- Any Planning Committee Councillor involved in such a meeting, who sits on the Committee that subsequently considers any resulting application, should declare their attendance at the meeting in the same way as lobbying would be declared.
- Officers (and any Councillor, if present) should make it clear from the outset that the discussion will not bind the Council to making a particular decision and that any views expressed are personal and provisional.
- Any advice given should be consistent and in accordance with the Development Plan and officers should agree, prior to any meeting, on a consistent interpretation of Development Plan policies as applied to the particular proposal.
- Councillors should not become drawn into any negotiations, which should be done by officers to ensure that the authority's position is co-ordinated.
- A contemporaneous note of the meeting should be prepared by the planning officer attending and a copy sent to all parties for their comment.
- The final version of the note of the meeting will be placed on the planning file and should a planning application subsequently be received, it will thereby be open to public inspection.

8.5 Councillors should not seek to arrange meetings that would circumvent the Council's normal pre-application procedures, including the need to charge applicants for such meetings.

8.6 In all cases, Planning Committee Councillors should not attend pre-application meetings that are not organised through officers.

9 POST-SUBMISSION DISCUSSIONS

9.1 A Planning Committee Councillor should not usually be involved in discussions with a developer or agent when a planning application has been submitted and remains to be determined. Potentially, these discussions could

be interpreted, particularly by objectors to a proposal, as an indicator of predetermination or bias.

- 9.2 There are limited circumstances when Planning Committee Councillors may legitimately engage in post-submission discussions. An example would be in the case of a large-scale development, where it is desirable for there to be a full understanding of the Council's planning and economic objectives. Such meetings will be organised by officers and run under the same procedural rules as pre-application discussions.
- 9.3 If a Planning Committee Councillor is contacted by the applicant, their agent or objectors, they should follow the rules on lobbying and consider whether it would be prudent in the circumstances to make notes when contacted. A Councillor should report to the Assistant Director Strategic Planning and Infrastructure any significant contact with the applicant or other parties, explaining the nature and purpose of the contact and their involvement, so that it can be recorded on the planning file.
- 9.4 Planning Committee Councillors should not attend post-submission meetings that are not organised through officers.

10 PLANNING APPEALS

- 10.1 Appeals against the planning decisions of the Council are heard by a Planning Inspector appointed by the Secretary of State. Any hearing or inquiry will be open to the public and Councillors are able to attend. Councillors are encouraged to attend such hearings, as they can be a good learning experience. This part of the Protocol is concerned with Councillors who wish to actively participate in these appeals.
- 10.2 If a Councillor wishes to attend a public inquiry or informal hearing as a Ward Councillor or as a member of the public, they are free to do so. It is strongly recommended that they discuss their participation with the Assistant Director Strategic Planning and Infrastructure to ensure that they are aware of the process and that they do not act in a manner which compromises their position as a Councillor, brings the Council into disrepute or puts the decision made at risk of challenge.
- 10.3 A Planning Committee Councillor cannot attend an appeal on behalf of the Council's Planning Committee, even if they sat on the Committee that made the decision, unless this is as part of the Council's case as decided by the Assistant Director Strategic Planning and Infrastructure. The decision of the Committee will be documented in the minute and set out in the decision notice. The planning officer will present the Council's case on its planning merits, in accordance with the Committee's decision. The inspector is required to determine the appeal on its planning merits and therefore all representations by the Council will be so directed.
- 10.4 Where the appealed decision was contrary to the officer's recommendation, officers are generally able to present the Council's case in a satisfactory manner. Where this may not be possible, the case will be presented by a planning consultant employed by the Council.

11 PLANNING ENFORCEMENT

- 11.1 It is perfectly legitimate for Councillors to bring to the attention of the Planning Service suspected breaches of planning control so that they may be investigated to see whether any action is possible or necessary. They should bring these to the attention of the Planning Service via the online form: make a formal complaint about a suspected breach of planning control.
- 11.2 The Council's planning enforcement service operates to a priority system so that those breaches that cause the most harm are dealt with first. This priority system is designed to produce a fair and responsive enforcement service. Councillors must not seek to have matters that they have raised given preferential treatment merely because they are a Councillor.

12 COUNCILLOR TRAINING

- 12.1 Councillors may not participate in decision making at meetings of the Council's planning committees unless they have attended mandatory training. This will be provided by the Council's planning and legal services and will cover the principles of planning and probity in planning.
- 12.2 Whilst all new Planning Committee Councillors (and new substitutes) must attend this compulsory training before they can participate in the Council's planning committees, all other Planning Committee Councillors (and substitutes) are also encouraged to attend so that they can ensure that they keep up-to-date on these matters. All Planning Committee Councillors (and substitutes) must attend this training at least every two years, or as recommended individually or collectively by the Monitoring Officer.
- 12.3 All Planning Committee Councillors should endeavour to attend any other specialised training sessions provided, since these will be designed to extend their knowledge of planning law, policy, procedures, and good practice, which will assist them in carrying out their role.
- 12.4 Training provided on planning related matters, whilst aimed at Planning Committee Councillors, is open to any Councillor with an interest to attend.

APPENDIX A: FURTHER READING

The Localism Act 2011

www.legislation.gov.uk/ukpga/2011/20/contents

National Planning Policy Framework, Ministry of Housing Communities and Local Government, March 2019

www.gov.uk/government/publications/national-planning-policy-framework--2

Planning Practice Guidance, Ministry of Housing Communities and Local Government

www.gov.uk/government/collections/planning-practice-guidance

Openness and transparency on personal interests: guidance for councillors, Ministry of Housing Communities and Local Government, March 2013

www.gov.uk/government/publications/openness-and-transparency-on-personal-interests-guidance-for-councillors

Committee on Standards in Public Life (1995) First Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report

<https://webarchive.nationalarchives.gov.uk/20131205113448/http://www.archive.official-documents.co.uk/document/cm28/2850/285002.pdf>

Committee on Standards in Public Life (1997) Third Report: Standards of Conduct in Local Government in England, Scotland and Wales, Volume 1 Report

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/336864/3rdInquiryReport.pdf

Royal Town Planning Institute, Code of Professional Conduct, February 2016

https://i.emlfiles4.com/cmpdoc/6/2/1/9/5/1/files/59082_rtpi-code-of-professional-conduct-feb-2016-new-cover-2017.pdf

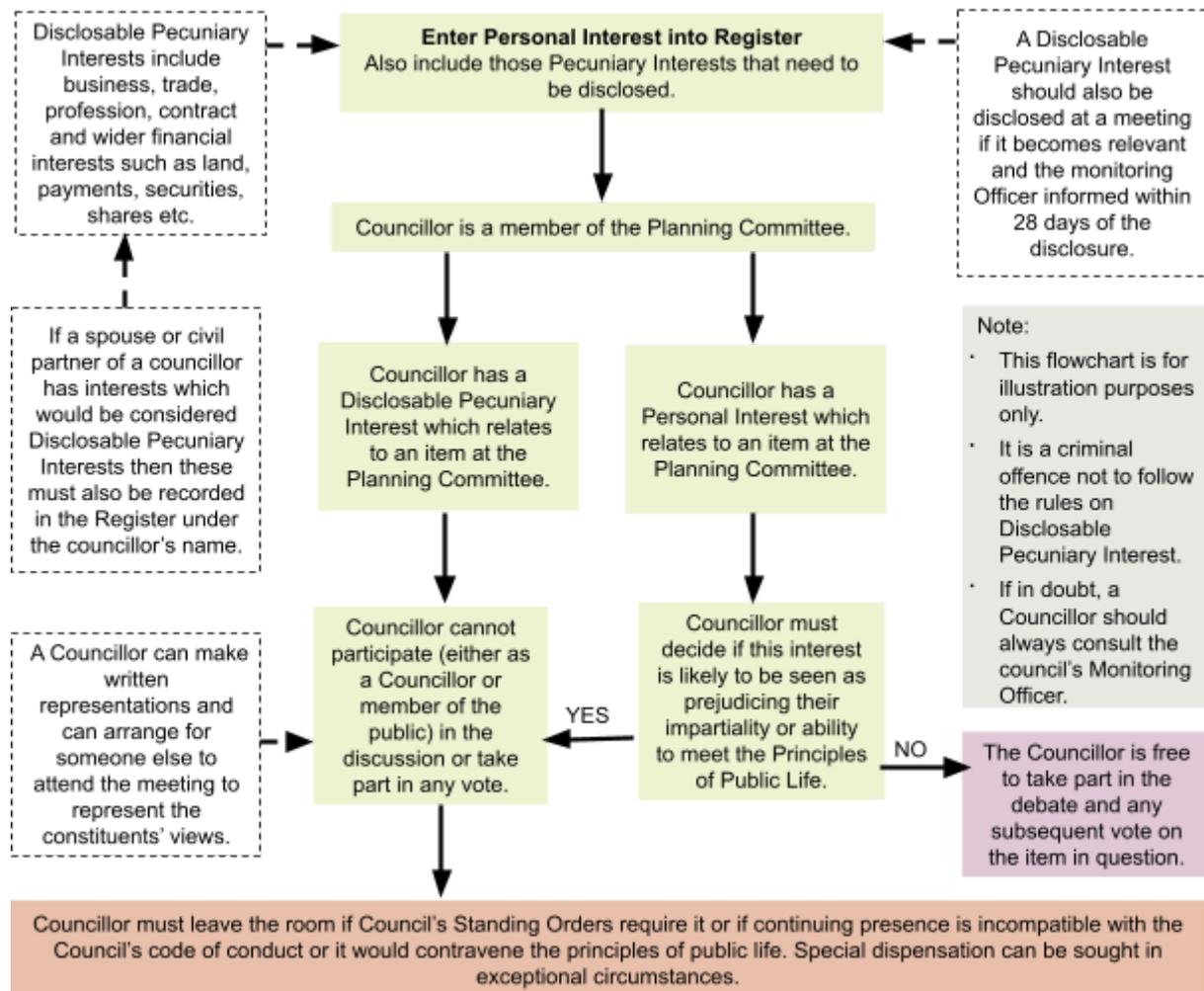
Royal Town Planning Institute, Guidance on Probity for Professional Planners, January 2020

www.rtpi.org.uk/media/3698387/Probity_and_the_Professional_Planner_FINAL_VERSION.pdf

Probity in Planning: Advice for Councillors and Officers Making Planning Decisions, Local Government Association, December 2019

www.local.gov.uk/sites/default/files/documents/34.2_Probity_in_Planning_04.pdf

APPENDIX B: FLOWCHART OF COUNCILLOR INTERESTS



From Appendix 1 to the Local Government Association's guidance, "Probity in planning: advice for councillors and officers making planning decisions" (December 2019)

APPENDIX C:
EXAMPLES OF DISCLOSABLE PECUNIARY INTERESTS

| Subject | Prescribed description |
|---|---|
| Employment, office, trade, profession or vacation | Any employment, office, trade, profession or vocation carried on for profit or gain. |
| Sponsorship | <p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p> |
| Contracts | <p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority:</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p> |
| Land | Any beneficial interest in land which is within the area of the relevant authority. |
| Licences | Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer. |
| Corporate tenancies | <p>Any tenancy where (to Member's knowledge):</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p> |
| Securities | <p>Any beneficial interest in securities of a body where:</p> <p>(a) that body (to Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either:</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p> |

Procedure Rules for Planning Committees

Introduction

- 1.1 This section sets out the operational procedure rules that are unique to Planning Committee and the Neighbourhood Committees (including any Planning Sub Committee) when they are dealing with planning matters. These Procedure Rules relate to all types of planning committee unless specifically stated otherwise.
- 1.2 When the term “Councillor” is used, it means that the text is applicable to all elected Members of the Council. The term “Planning Committee Councillor” means a Member or a substitute Member of the Council’s Planning Committee or Neighbourhood Committee, including any co-opted members, when dealing with a planning matter.
- 1.3 The determination of planning applications is a statutory administrative process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by aggrieved parties. Complaints about maladministration and injustice can also be made to the Local Government Ombudsman. To mitigate these risks, it is vital that those involved in the determination of planning applications, and particularly officers and Councillors, act reasonably and fairly to applicants, supporters and objectors.
- 1.4 These Procedure Rules are designed to help ensure that this is achieved, but they should not be read in isolation. Councillors need to also have regard to the Planning Protocol within this Constitution. Whilst both these Procedure Rules and the Planning Protocol interpret the Members’ Code of Conduct with respect to planning matters, they are subordinate to the Members’ Code of Conduct and, in the event of any inconsistencies arising between these Procedure Rules and the Members’ Code of Conduct, the latter shall prevail.

Committee Agenda

- 1.5 The Committee’s agenda may contain the following sections for planning reports:
 1. **Development presentations:** to enable the Committee to receive presentations on proposed developments, including when they are at the pre-application stage. These items do not attract public speaking rights.
 2. **Applications for decision:** these items attract public speaking rights.
 3. **Other planning matters:** non-application matters that require Committee consideration. These items do not attract public speaking rights.
- 1.6 Under the Responsibility for Functions for the Neighbourhood Committees, the Chair of Planning Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, must consider that it is appropriate for a Neighbourhood Committee to consider a recommendation to approve an

Application for Planning Permission. The circumstances where he/she would not agree to this include:

- The referral person/body concerned have referred an excessive amount of applications to committee; or
- A referral person/body did not attend the committee to address their concerns on more than two occasions in any year; or
- The application clearly complies with relevant planning policies and there are no grounds to refuse it.

1.7 Where the Chair of Planning Committee exercises this gatekeeping function this will be reported to the next available Planning Committee for information, setting out the reasons why the power was used in the particular case.

Pre-Committee Matters

1.8 The work of Planning Committee mainly comprises the determination of planning applications. Delays in determining applications will jeopardise the Council's ability to meet national performance targets and impact adversely on the interests of residents and affected applicants.

1.9 The Council is expected to decide all applications within statutory timescales. Applications that are to be considered by Committee are included on the agenda of the first available Committee after completion of the officer's report so that a decision can be taken in the shortest possible time. For this reason, Councillors should avoid requests for officers to speed up or delay the determination or assessment of an application for their own personal or political convenience or following lobbying by applicants, agents/advisers, residents or other interested parties.

Pre-Committee Briefing

1.10 A further potential cause of delay is the deferral by committee of agenda items for Councillors to receive further information. To minimise this risk Planning Committee Councillors who consider that they need further information (including the need for a site visit) or who have queries on an application should contact the Assistant Director Strategic Planning and Infrastructure as soon as possible before the meeting at which it will be considered.

1.11 Planning Committee Councillor involvement in this way can help identify issues early on, help councillors lead on community issues, and help to make sure that issues don't come to light for the first time at committee. A 'no surprises' at committee approach should be the aim.

Site Visits

1.12 It is advisable that Planning Committee Councillors are familiar with the sites of the applications on the agenda to enable them to make informed decisions on the planning applications before them.

1.13 The presumption will be that Planning Committee Councillors will be sufficiently familiar with the agenda sites and their locations before the meeting. Councillors

may already be familiar with them from their local knowledge or will visit one or more of them in advance of the meeting. Advice on site visits by individual Planning Committee Councillors is given below.

1.14 In addition, photographs of sites will be presented by officers at committee.

1.15 The Chair of Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, will decide in advance of the meeting of a Committee whether there is a need for the whole Committee to visit a site. Such a visit will normally take place on the Monday before the scheduled Committee meeting. The procedures for this are set out below.

By Planning Committee Councillors

1.16 Where a Planning Committee Councillor visits the site before the meeting, care must be taken to ensure that they comply with the Planning Protocol in the Constitution. Such visits should be carried out discreetly and the Councillor should avoid making themselves known to the applicant or to neighbours. Accordingly, he/she should not go onto private land, such as the application site or a neighbouring property. The reason for this is that contact between a Planning Committee Councillor and the applicant or a local resident could be misinterpreted as lobbying and may create a suspicion of bias. Where such contact is made, this should be declared in Committee, but it should not prevent that Councillor from taking part in the consideration of that application, if he/she has followed the advice in the Planning Protocol and acts in accordance with the Members' Code of Conduct.

By the Planning Committee

1.17 Where the Chair of the Committee, in consultation with the Assistant Director Strategic Planning and Infrastructure, considers that a whole committee site visit is necessary because a proposal appears to be particularly complex or it is difficult to visualise from the plans, this will be made in advance of the Committee meeting.

1.18 A request for a site visit cannot be made during the meeting of the committee.

1.19 The procedure for site visits by Committee shall be as follows:

- Only the Planning Committee Councillors and officers can attend a site visit.
- Arrangements for visits will not normally be publicised or made known to applicants, agents or third parties, such as objectors.
- Where permission is needed to go onto land, contact will be made with the owner by officers. The owner cannot take any part in the visit, other than to facilitate access onto the site.
- The purpose of a site visit is to enable Planning Committee Councillors to view the site and to better understand the impact of the development. The Committee should not receive representations or debate issues during a site visit. They can ask the Planning Officer present questions of clarification.
- The Planning Officer will make a note of the site visit and it will be placed on the planning file.

- Where new information emerges from a site visit that needs to be brought to the attention of the Committee, this will be included in the Late Material Report.
- Failure to attend a formal site visit shall not bar a Planning Committee Councillor from voting on an item at the Committee meeting that considers it, provided the Planning Committee Councillor is satisfied that he/she is sufficiently familiar with the site and its location.

Reports and Recommendations

- 1.20 Each planning application for decision will be the subject of a written report with an officer recommendation. Reports will be produced in a standard form provided by the Assistant Director Strategic Planning and Infrastructure, and will identify and analyse the material considerations, of which the Committee need to take account when considering the application on its planning merits.
- 1.21 In addition to the written report, illustrative material will usually be presented at the meeting to explain the scheme.

Recommendations

- 1.22 The recommendations in the reports to Committee will not set out the full wording of planning conditions, reasons for refusal, informatives and planning obligations, but are a summary of them. There are two reasons for this:
- It communicates the details of the recommended decision more clearly to the Committee than many pages of detailed conditions or grounds; and
 - There can sometimes be a delay before a decision is issued (such as waiting for the signing of a legal agreement or views from the Mayor of London and/or the National Planning Case Unit) and something may arise which necessitates an amendment, a deletion or an addition.
- 1.23 The recommendation in reports to Committee therefore delegates to the Assistant Director Strategic Planning and Infrastructure the communication of the detailed wording of Committee decisions to applicants.

Late Material

- 1.24 It is common for material (such as late representations) to be received by the Planning Service after the close of the agenda. Such material will be considered and placed on the public planning file along with all the other papers for the application, subject only to any public exclusion.
- 1.25 Where this material needs to be brought to the attention of the Committee, so that it can be considered, it will be presented in the Late Material Report. It will comprise a summary of what has been raised, in the same way as representations and other submissions are summarised in the main Committee report.
- 1.26 The practicality of producing such a report means there must be a cut-off point for the receipt of late material by the Planning Service. This is noon the day before the meeting. Generally, material received after this time will not be reported to the Committee. The Assistant Director Strategic Planning and Infrastructure has an absolute discretion in this regard.

- 1.27 Material must not be distributed to Committee Councillors by members of the public (including public speakers) or other Councillors during the meeting as they may not be able to give proper consideration to the new information and officers may not be able to check for accuracy or provide considered advice on any material considerations arising.
- 1.28 The distribution of such material must be done in advance of the meeting by either supplying it to the Planning Service, if it is written material and can be included in the Late Material Report in line with the above timescales, or otherwise by sending it direct to Councillors and the Planning Service in advance of the meeting, again by noon of the day of Committee. The contact details of Councillors are available from the Council's website. Planning or Democratic Services will not distribute material to Planning Committee Councillors other than via the Late Material Report. Councillors who receive material in advance of the committee should ensure that the Planning Service have been sent a copy in time.
- 1.29 If material is not sent to the Planning Service in time and the officer advising the committee has therefore not had the opportunity to examine the material in advance of the committee meeting, the committee will be required to disregard the material and not take it into account when making the decision.

Public Speaking

- 1.30 People can only address the committee on items that are on the Applications for Decision part of the agenda. Other planning matters on an agenda (such as Development Presentations) do not attract public speaking rights, except at the discretion of the Chair.

Speaking slots

- 1.31 Subject always to the limitations below, for each planning application on the "Applications for Decision" part of the agenda there are the following separate categories of speaking slot, in the following order, allocated to:
1. Objectors who have registered a speaking slot (a "Registered Objector")
 2. The applicant or his/her agent/representative/supporter(s) in response to a Registered Objector (a "Responding Applicant")
 3. A Ward Councillor, or a Councillor of a ward that adjoins the application site, who has submitted a Call-In Request in accordance with the Responsibility for Functions for the committee (a Call-In Member) who wishes to speak in objection to planning application
 4. A Ward Councillor, or a Councillor of a ward that adjoins the application site, who has submitted a Call-In Request in accordance with the Responsibility for Functions for the committee (a Call-In Member) who wishes to speak in support of a planning application

5. Any other Councillor who has submitted a request to address the Planning Committee 24 hrs prior to commencement of the meeting⁴ who wishes to speak in objection to planning application
6. Any other Councillor who has submitted a request to address the Planning Committee 24 hrs prior to commencement of the meeting⁵ who wishes to speak in support of a planning application
7. Any questions by Planning Committee Councillors of clarification to any objectors (see Para 1.55)
8. Any questions by Planning Committee Councillors of clarification to the applicant or his/her agent/representative/supporter(s) (see Para 1.55)

Limitations

1.32 Where an item is on the agenda only because of Objections received (including from Ward Members or Conservation Area Advisory Committee Chairs/Vice Chairs) and:

- no Registered Objector or a Call-In Member (if not a member of the Planning Committee) has registered a speaking slot; or
- a Registered Objector or a Call-In Member (if not a member of Planning Committee) has registered a speaking slot but nobody has registered their attendance at the meeting in accordance with the procedures set out above;
- the item will be removed from the agenda and reverted to the Assistant Director Strategic Planning and Infrastructure to determine under delegated powers and will not be considered by the committee. In such circumstances, any Responding Applicant would lose their right to address the Committee.

1.33 At the start of the committee the Chair will inform the meeting that such items have been reverted to officers for determination.

Time limits

1.34 For each agenda item speaking is allowed for five minutes in total for each slot identified in paragraph 1.31 . This time is to be shared by however many people want to speak. Objectors will either decide amongst themselves on a spokesperson or some other arrangement to share the time. The applicant will decide who will speak in his/her slot.

1.35 Where Objectors cannot come to an agreement, the Chair will be notified of this through the Democratic Services officer and the Chair will decide who will be accorded the right to speak. Preference will normally be given to those who are potentially most affected by the planning application and particularly those

⁴ For the avoidance of doubt, for the purposes of non Planning Committee members addressing the Planning Committee, Rule 27 of Part 4a of the Royal Borough of Kingston upon Thames Constitution shall be interpreted in accordance with the Planning Protocol and Procedure Rules

⁵ For the avoidance of doubt, for the purposes of non Planning Committee members addressing the Planning Committee, Rule 27 of Part 4a of the Royal Borough of Kingston upon Thames Constitution shall be interpreted in accordance with the Planning Protocol and Procedure Rules

closest to the application site. The Chair may take advice from officers in making this decision. In order to ensure the most efficient progress of Committee business on the evening, the decision of the Chair will be final and not be the subject of further debate, including in the Committee.

1.36 If more than one Call-In Member indicates that they wish to speak, they will share the speaking slot equally, unless they agree to a different distribution of the time. ~~The Chair of the Planning Committee will be provided with details of the arrangements for sharing the time prior to the commencement of the meeting. The Chair will ensure the agreed distribution of time is followed.~~

1.37 ~~If more than one non Planning Committee Member indicates that they wish to speak, they will share the speaking slot equally unless they agree to a different distribution of the time. The Chair of the Planning Committee will be provided with details of the arrangements for sharing the time prior to the commencement of the meeting. The Chair will ensure the agreed distribution of time is followed.~~

1.38 If a Call-In Member wishes to speak but is unable to attend the Committee, they may nominate a substitute Member to address the Committee on their behalf. The Call-In member must inform the Chair of this in advance of the meeting.

~~1.39 The applicant will decide who will speak in his/her slot.~~

1.39 On multiple applications for the same site, Chairs have discretion to allocate speaking time to each application in a way which enables points to be made on applications as a package or singly taking account of the numbers of speakers, views on the use of time and the practicalities of managing the meeting.

1.40 If the Chair, using his/her discretion, changes the time allocated to any speaker slot, ~~both~~ all speaker slots will be offered the same length of time to speak. The number of objectors or supporters should not, of itself, be a consideration for increasing the length of the speaker slots.

How will people know they can speak?

1.41 Where a planning application is reported on the “Applications for Decision” part of the agenda, all the individuals and organisations (including Councillors) that responded to consultation/publicity/advertisement on the application will be notified (by letter or email) that the application will be considered by Committee.

1.42 The Council will only notify the person who sends in a petition or a bundle of pro-forma letters about the progress of an application. Where we receive a petition that is not sent in by an individual, we will write to the first person on the petition, if a clear address is included. ~~Pro-forma letters that are received individually will not be notified about the progress of an application. A pro-forma letter is a letter or email that has been produced and distributed for people to just sign (or reproduce and sign) and send to the Council.~~

1.43 The applicant (or his/her agent) will be sent a similar notification.

- 1.44 The notification will explain the procedures regarding public speaking. Requests to address Committee will not be accepted prior to the publication of the agenda and these notifications.

Timescale for parties to notify that they want to speak

- 1.45 Objectors and Applicants wanting to address the Committee must notify the Council by the date specified in the notification communication. Email or telephone should be used for this purpose. Speakers should provide their name and contact details (email address and/or phone number) so that any changes to the arrangements can be communicated.
- 1.46 The Assistant Director Strategic Planning and Infrastructure, in consultation with the Monitoring Officer and the Chair, has discretion to reduce the deadline for registration in cases where applications are circulated within 5 clear days, without prior notice having been given.
- 1.47 Objectors can only register if they have replied to the consultation, publicity or advertisement of the application.
- 1.48 Applicants can only speak in response to registered objectors who address the committee but also need to register in advance to reserve a slot. If there are supporters wishing to address the committee, they must liaise with the applicant. However, the slot is for the applicant to decide how to use.
- 1.49 If a public speaker needs special arrangements this must be brought to our attention when registering a speaking slot so that arrangements can be made in good time. Kingston Guildhall has facilities for wheelchair users, including level access and toilets. The Chamber is fitted with a hearing loop. [CHECK]

Applications which have been deferred and are being reconsidered

- 1.50 Speakers can register to speak again when a deferred application is brought back to Committee – it is in effect no different to any other application.

Registering attendance

- 1.51 On the night of the Committee meeting Registered Objectors and Responding Applicants who have a registered speaking slot and Call-In Members (or their substitutes) must register their attendance with the Committee Clerk at the meeting at least 15 minutes before the meeting starts.

Order of speaking

- 1.52 The running order for each committee item is set out below under Committee running order. The order of public speaking will be Registered Objectors followed by a Responding Applicant followed by Call-In Members.

Speaking

- 1.53 All those involved in public speaking are restricted to an oral presentation only. The officers' presentation is therefore not available for use by public speakers.
- 1.54 Following the completion of a speaker's address to the Committee, that speaker shall take no further part in the proceedings of the meeting, unless permitted to do so by the Chair of the Committee.

1.55 Planning Committee Councillors may, through the Chair, ask questions of clarification following the completion of public speaking and the officer introduction/presentation. It is for the Chair to decide who should answer the question.

1.56 See the procedures above (Late Material) for the rules around the distribution of material to members of committee.

Additional considerations for Councillors

1.57 When a Councillor addresses the Committee in accordance with [paragraph 1.31](#) of these Procedure Rules they must:

- declare, before making their speech, details of any material contact with the applicant, agent, adviser, neighbour, objector or other interested party and whether the speech is made on behalf of such person(s) or any other interest;
- sit separately from Planning Committee Councillors, to demonstrate clearly that he/she is not taking part in the discussion, consideration or vote; and
- not communicate in any way with Planning Committee Councillors or pass papers or documents to them during the meeting.

1.58 Where a Councillor has a Disclosable Pecuniary Interest, the Councillor may only address the Committee on any matter in which they have such an interest if they have been granted a dispensation by the Monitoring Officer for this purpose. See the Planning Protocol for further advice on Interests in the context of planning matters.

Chair's discretion

1.59 At the discretion of the Chair, such as in the interests of natural justice or in exceptional circumstances, the public speaking procedures may be varied. The reasons for any such variation shall be recorded in the minutes.

Committee Running-Order

1.60 The reports under each section of the agenda will be considered in the following way.

Developer Presentations

1.61 The procedure for considering each item shall be as follows:

- The Assistant Director Strategic Planning and Infrastructure, or his/her representative, will introduce the main issues;
- The developer will present their scheme for no longer than 15 minutes unless the Chair, exercising his/her discretion, has allowed a longer period;
- Through the Chair, Committee Councillors ask questions of the developer; and
- The Assistant Director Strategic Planning and Infrastructure, or his/her representative, will summarise the issues raised by the Committee which will form the minute for the item.

Applications for Decision

1.62 The procedure for considering applications where there are public speakers shall be as follows:

1. The Assistant Director Strategic Planning and Infrastructure, or his/her representative, will introduce the development the subject of the application;
2. Public speaking (in accordance with the above procedures) will take place;
3. The Assistant Director Strategic Planning and Infrastructure, or his/her representative, will present the material planning considerations and address, where necessary, any issues raised during public speaking; and
4. The Committee will consider the item and reach a decision.

1.63 The procedure for considering applications where there are no public speakers shall be as follows:

1. If requested by the Chair, the Assistant Director Strategic Planning and Infrastructure, or his/her representative, will present the main issues; and
2. The Committee will consider the item and reach a decision.

Other Planning Matters

1.64 The procedure for considering any item shall be as follows:

- If requested by the Chair, the Assistant Director Strategic Planning and Infrastructure, or his/her representative, will present the main issues; and
- The Committee will consider the item and, if required, reach a decision.

Decision Making

1.65 In coming to a decision on a planning application, a Planning Committee Councillor must.

- Come to meetings with an open mind.
- Comply with these Procedure Rules.
- Not allow anyone (except officers, other Planning Committee Councillors and public speakers when they are addressing the Committee) to communicate with you (orally, electronically, in writing or by any other means) during the Committee's proceedings as this may give the appearance of bias. For the same reason, it is good practice to avoid such contact in the period before the meeting starts and when it ends.
- Consider the advice that planning, legal or other officers give the Committee in respect of the recommendation, any proposed amendment to it or on any other matter.
- Comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and always make decisions in accordance with the development plan unless there are good and demonstrable planning reasons to come to a different decision.
- Come to a decision only after due consideration of all the information reasonably required to base a decision upon. This will include the local

information that Planning Committee Councillors are uniquely placed to access, but always remembering to take decisions on planning grounds alone.

- Raise any queries you may have on an application with the Assistant Director Strategic Planning and Infrastructure prior to the meeting, including the need for additional information – a ‘no surprises’ at committee approach should be the aim.
- If you feel that there is insufficient time to digest new information or that there is insufficient information before you, seek an adjournment to allow these concerns to be addressed.
- Make sure that if you are proposing, seconding or supporting a decision contrary to the officer’s recommendation or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion and that you consider any advice planning, legal or other advice officers give you. Your 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.

Attendance

- 1.66 Where a decision is made on an agenda item, to be able to vote a Planning Committee Councillor must be present throughout the whole of the Committee’s consideration of that item, including the officer introduction/presentation and any public speaking. Any dispute as to whether the Committee Councillor in question should be permitted to vote shall be decided by the Chair, in consultation with the legal officer and other officers as necessary.
- 1.67 The Chair should be prepared to consider adjourning briefly to allow any necessary comfort breaks during meetings.
- 1.68 The need to be present throughout the item does not apply to Development Presentations because no decisions are being made as they are part of an informal pre-application process, rather than the formal planning application decision making process.

Voting Procedures

- 1.69 The Chair will bring the Committee to a vote when he/she considers that there has been sufficient debate of an item.
- 1.70 ~~The Committee will vote on the recommendations set out in the report. Prior to commencing the debate i.e. moving to Para 1.62 (4) or 1.63 (2) of the Committee Running Order (see Para 1.60) the Chair of the Committee will move the recommendation as set out in the report and seek a seconder. ; unless a motion is made and seconded to defer or adjourn consideration of an item (for example for further information/advice).~~
- 1.71 If a Committee Member wishes to amend the recommendation (such as an additional condition or a variation to a condition) they will need to move this, have it seconded and agreed, prior to any vote on the recommendation.
- 1.72 The Committee must consider carefully any advice officers give on a proposed amendment. If the Assistant Director Strategic Planning and Infrastructure (or

his/her representative) consider that he/she is unable to give that advice immediately, further consideration of the matter will be suspended and the agenda item will be adjourned so that the Assistant Director Strategic Planning and Infrastructure can bring a report to the next available Committee setting out his/her advice. If legal advice is required, this may need to be on the private business part of the agenda. In such cases, it will be important that the Chair communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future Committee meeting.

- 1.73 For the vote on the recommendation (or an amendment to the recommendation) to be successful there needs to be a majority vote in favour of it. In the event of an equality of votes, the Chair has an additional unconstrained casting vote. This can be exercised irrespective of whether the Chair voted.

Decisions contrary to the recommendation

- 1.74 A motion to go against the recommendation must always be considered after a vote on the recommendation (or an amended recommendation) has taken place, so that officers are clear that the Committee may be minded to go against the recommendation and can prepare their advice accordingly.
- 1.75 When the recommendation is not supported, a new motion to either grant or refuse the application must be moved and seconded. However, before a new motion is proposed, the Committee must first receive advice from the Assistant Director Strategic Planning and Infrastructure, or his/her representative, as to what form a new motion could take. That advice will be based upon the material planning considerations that have been discussed by the Committee and whether there are grounds that could be defended in the event of an appeal or legal challenge.
- 1.76 The solicitor advising the Committee may be called upon as necessary to give advice on legal matters but cannot advise the Committee on planning matters.
- 1.77 Once the Committee has received the advice of the Assistant Director Strategic Planning and Infrastructure, or his/her representative, they can proceed to a vote. ~~In such circumstances, the Lawyers in Local Government Model Council Planning Code and Protocol (2013 update) gives the following useful advice, under the heading "Decision-making": A detailed minute of the Committee's reasons to go against the officer's recommendation, which as a matter of best practice, following *Dover District Council v CPRE Kent* [2017] in the UK Supreme Court, should be clear and convincing, shall be made and a copy placed on the application file.~~

"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." (their emphasis)

- 1.78 If the Assistant Director Strategic Planning and Infrastructure (or his/her representative) consider that he/she is unable to give that advice immediately, the procedure outlined in paragraph [1.75] above must be followed. In such

cases, it will be important that the Chair communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future meeting of the Committee.

Decisions contrary to the Development Plan

- 1.79 The law requires that where the Development Plan is relevant, decisions must be taken in accordance with it unless there are good planning reasons to do otherwise⁶. If a Committee intends to approve an application which does not accord with the provisions of the Development Plan, the material considerations must be clearly identified and the justification for overriding the Development Plan clearly demonstrated. The application must be advertised in accordance with Article 15 of the Town and Country Planning (Development Management Procedure) Order 2015 and, depending upon the type of development proposed, may also have to be referred to the Secretary of State for Housing, Communities and Local Government (National Planning Case Unit). Such a decision is referred to as a Departure.
- 1.80 If the recommendation in the officer report constitutes a Departure, the justification will be included in that report and the necessary advertisement would have been undertaken.
- 1.81 If the Committee is minded to make a decision which would be contrary to the officer recommendation and that decision (in the opinion of the Assistant Director Strategic Planning and Infrastructure) would constitute a Departure, such a motion may only contain the Committee's initial view and must be subject to a further report detailing the planning issues raised by such a decision. Further consideration of the matter will be suspended to a future meeting of the Committee when officers will present a report setting out the proposed new position and explaining the implications of the decision. If legal advice is required, this may need to be on the private business part of the agenda. Any necessary advertisement of the application will also be undertaken. In such cases, it will be important that the Chair communicates clearly to the meeting that a decision on the application has not been made and that it will be considered further at a future meeting of the Committee.
- 1.82 In the case of Neighbourhood Committees, the further consideration of the matter will be at Planning Committee because of the restriction on Neighbourhood Committees from taking decisions that conflict with Council policy.
- 1.83 If, having considered the report, the Committee decides to determine the application contrary to the provisions of the Development Plan, [the Lawyers in Local Government Model Council Planning Code and Protocol \(2013 update\)](#) gives the following useful advice, under the heading "Decision-making"
- ["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](#)

⁶ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.” (their emphasis)

Delegation to Officers

1.84 The recommendation in reports to Committee delegates to the Assistant Director Strategic Planning and Infrastructure the communication of the detailed wording of Committee decisions to applicants. For the avoidance of doubt, where Committee determines an item on an agenda:

- in the event of amendments being made to an officer recommendation by the Committee or if the Committee makes a decision which is not in accordance with the officer recommendation, the task of formalising the wording of those changes (including the detailed wording of reasons for going against the officer recommendation) within the substantive nature of the Committee decision is for the Assistant Director Strategic Planning and Infrastructure;
- the Assistant Director Strategic Planning and Infrastructure can, [in consultation with the relevant Chair of the committee](#), make changes to the wording of the Committee decision (such as to delete, vary or add conditions, informatives, planning obligations or reasons for the decision) and to accept changes to the application prior to the decision being actioned, provided that the Assistant Director Strategic Planning and Infrastructure is satisfied that any such changes could not reasonably be regarded as deviating from the overall principle of the decision reached by the Committee nor that such changes could reasonably have led to a different decision having been reached by the Committee.

Minutes

1.85 The minutes of the meeting will record:

- The Councillors and officers present at the meeting;
- Any disclosures of interest made by Councillors or officers;
- For each item, the identity of any public speakers and the decision;
- Where a decision goes against the recommendation, the reason(s) for doing so;
- Where a decision is deferred, the reason(s) for doing so;
- The use of the Chair’s discretion to depart from Standing Orders or any other Constitutional rules or procedures, and the reason(s) for doing so; and
- The time the meeting finished.