

PLANNING COMMITTEE

6 APRIL 2016

OFFICER DELEGATED POWERS AND CODE OF GOOD PLANNING PRACTICE (INCLUDING SITE VISIT PROTOCOL)

Report from: Richard Hicks, Director of Regeneration, Community and Culture

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Summary

The report asks the Committee to formally recommend minor updates to the Planning Code of Good Practice in the Constitution to clarify the position on participation by Members at Planning Committee in relation to Council-owned developments and to update the site visit protocol to reflect current practice. The report also asks the Committee to consider a change to the provisions in the officer scheme of delegation relating to the triggers for escalation of planning applications from officer to Committee level. Any decisions or recommendations of the Committee which have the effect of changing the Constitution will need to be referred to full Council for approval (unless they are minor, in which case the Monitoring Officer has a delegation to make the changes).

1. Budget and Policy Framework

- 1.1 The Monitoring Officer has an obligation to monitor and keep the operation of the Constitution under review.
- 1.2 The Council's Planning Code of Good Practice, including the site visit protocol, is contained in Chapter 5 of the Constitution.
- 1.3 Under Section 101 of the Local Government Act 1972 the Council has delegated authority to this Committee to determine all planning applications as set out in the Committee's terms of reference. The Committee may, in turn, arrange for any of its functions to be discharged by a Sub Committee or officer.
- 1.4 Paragraph 14.3 (Changes to the Constitution) of Article 14 of the Constitution states that changes to the Constitution are a matter for Council (except for minor changes where the Monitoring Officer has delegated authority with a copy of such changes being supplied to all Group Leaders and Whips within 14 days).

2. Background

- 2.1 The site visit protocol in the Council's Constitution requires updating to reflect current practice. The protocol is part of the Council's Planning Code of Good Practice which is attached at Appendix A .Some other minor amendments to the Code are also recommended to clarify the position on participation by Members at Planning Committee in relation to Council own developments. The proposed revisions are shown as tracked changes in Appendix A .
- 2.2 The scope of officer delegations in relation to the determination of planning applications is set out in paragraph 8.1 of Section 8 of the Officer Scheme of Delegations in the Council's Constitution as attached at Appendix B.
- 2.3 The Director of Regeneration, Community and Culture has authority to determine applications unless the circumstances in sub paragraphs (i) to (vii) in paragraph 8.1 of section 8 of the officer scheme of delegations apply. The majority of applications (90%) are dealt with by officers under these arrangements. The triggers for escalation of a planning application for determination by this Committee currently include a request from a Parish Council within 21 days of publication of the weekly list of planning applications as long as material planning considerations are cited. Also, receipt of three or more letters of representation (from separate households) contrary to the proposed officer decision, or one representation contrary to the proposed decision from a Parish Council or a Resident's Society or an Amenity Society except where there are no reasonable planning grounds supporting the representation (in which case the application will be dealt with at officer level).
- 2.4 Following discussion with the Chairman of this Committee and the designated Opposition Spokespersons it is proposed to make a change to the circumstances in which planning applications may be escalated from officer level with a view to preserving a focus by the Committee on significant or controversial applications.
- 2.5 The proposed change relates to the current facility for Amenity Societies to ask for an application to be escalated in circumstances where no representations have been received from neighbouring residents. It is proposed that in future representations from Amenity Societies contrary to the proposed officer decision and clearly identifying material planning grounds would only trigger an escalation where at least two relevant representations contrary to the Officer recommendation are also received from separate households in the vicinity of the site.
- 2.6 In view of the legal requirement for Parish Councils, as the third tier of local government in the area, to be consulted on planning applications by Medway Council, it is proposed to preserve the opportunity for a Parish Council to trigger an escalation to Committee level as long as the representation identifies material planning grounds; otherwise the Director of Regeneration Community and Culture will deal with the application.
- 2.7 It is also proposed to continue the facility for representations from Residents Societies/Associations contrary to the proposed officer decision to trigger an escalation to the Planning Committee as long as they clearly identify material planning grounds.

2.8 The provision for the Director of Regeneration, Community and Culture, in consultation with the Chairman of the Committee and designated Opposition Spokespersons, to decide to deal with an application at officer level where a Parish Council representation or representations from a Residents Society/Association no reasonable planning grounds would be retained. For example, where a representation has no planning justification such as requesting car parking provision in excess of adopted standards.

3. Options

3.1 The Council's site visit protocol must be updated to reflect current and established practice. Some other changes are proposed to the Planning Code of Good Practice in the Constitution to clarify the position on Council-owned developments and to update the site visit protocol to reflect current practice. These revisions are shown as tracked changes in the Appendices to this report and are considered to be essential to ensure the Code is up to date and consistent with good principles of decision-making.

3.2 The options open to Members in relation to the escalation of planning applications are either to make no change to officer delegations or to make the revisions shown as tracked changes in Appendix B in respect of representations from Amenity Societies in order to preserve a focus by the Committee on significant or controversial applications.

4. Advice and analysis

4.1 The Planning Committee is recommended to approve the changes to the Planning Code of Good Practice including the site visit protocol and the scheme of employee delegations as set out in Appendices A and B and to recommend full Council to agree the consequential changes to the Constitution.

5. Risk Management

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Out of date information in the Council's Constitution	The site visit protocol in the Constitution is out of date and there is a risk that the Council could be asked why it is operating different arrangements	An updated site visit protocol has been produced for approval by this Committee and full Council

Risk	Description	Action to avoid or mitigate risk
Loss of focus on significant or controversial planning applications by the Planning Committee	Some planning applications are being escalated to Committee as a consequence of representations from Amenity Societies in cases where there have been no representations from households in the immediate vicinity of the site. Members have expressed the view that these should more appropriately be dealt with at officer level to preserve the focus of the Committee on significant or controversial applications	The Committee is invited to consider changes to the officer scheme of delegations as set out in Appendix B to address these concerns.

6. Consultation

- 6.1 Consultation on the proposals in this report has been undertaken with the Chairman and designated Opposition Spokespersons of the Planning Committee, all of whom support the recommendations.

7. Financial implications

- 7.1 None

8. Legal implications

- 8.1 The determination of planning applications is a non-executive function of the Council. Section 101 of the Local Government Act 1972 provides for the Council to arrange for the determination of planning applications by a Committee, a Sub Committee or an officer and for a Committee to delegate its functions to a Sub Committee or an officer.

9. Recommendations

- 9.1 The Committee is recommended to ask the Council to approve changes to the Planning Code of Good Practice, including an update to the site visit protocol, as set out in Appendix A to this report.
- 9.2 The Committee is recommended to approve a change to the scheme of employee delegations relating to the determination of planning applications, as set out in paragraph 2.5 and shown as tracked changes in Appendix B to this report.
- 9.3 The Committee is asked to recommend the Council to approve the consequential change to the Constitution.

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Appendices:

Appendix A – Medway Council Planning Code of Good Practice

Appendix B – Extract from Employee Scheme of Delegations

Background papers:

Medway Council Constitution

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Appendix A

PART 2 - MEDWAY COUNCIL PLANNING CODE OF GOOD PRACTICE (incorporating the Site Visit Protocol)

1. Introduction

1.1 This code of good practice (the Planning Code) gives advice to Councillors who:

- are members of a Planning Committee (the Committee);
- sit in on a meeting of the Committee as a substitute member;
- attend the Committee (whether or not they take part in a debate in the Committee on a planning application or other development management matter);
- are involved outside the Committee on a planning application or other development management matter – including informal occasions such as meetings with officers or public and consultative meetings;
- attend planning application site visits.

1.2 A key aim of the Planning Code is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or is not well founded in any way. Councillors must make planning decisions openly, impartially with sound judgment and for justifiable reasons.

1.3 This is particularly important, as planning matters will be subject to close scrutiny both because large sums of money will be at stake for applicants for planning permission and because the quality of the built and natural environment in which local residents and the wider community live and work may be irrevocably affected.

1.4 The Human Rights Act 1998 has implications for the planning system and has created enhanced requirements for procedural fairness, transparency and accountability in determining planning applications.

1.5 The Planning Code is intended to minimise the prospect of legal or other challenge to planning decisions. However, non-compliance without good reason could be taken into account in investigations into a breach of the Members' Code, possible maladministration or may have implications for the standing of Councillors and the Council as a whole.

2. Relationship with the members' code of conduct

2.1 The members' code of conduct ("the Members' Code") must always be complied with and the rules in that code must be applied before considering the Planning Code.

- 2.2 The Planning Code is not intended to form a part of the adopted Members' Code but is a separate document, which is both supportive of the Members' Code and the source of expanded guidance in the particular area of planning.
- 2.3 To distinguish it from the Members' Code, this document is referred to as the Planning Code.

3. Disclosable Pecuniary Interests

- 3.1 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in the list attached to the Members' Code.
- 3.2 The requirement to notify the Monitoring Officer of a DPI applies not only to a Councillor's own interests but also to those of the Councillor's husband/wife/civil partner or a person with whom the Councillor is living as husband/wife or as if they were civil partners, if the Councillor is aware that that person has the interest. In this Planning Code such a person is referred to as a "relevant person".
- 3.3 Failure to so notify/disclose a DPI in the circumstances required by the Localism Act 2011 is a criminal offence. Therefore the requirements as to notification, disclosure and participation must be followed scrupulously and Councillors should review their situation regularly. Whilst advice can be sought from the Monitoring Officer, ultimate responsibility for compliance rests with individual Councillors.
- 3.4 A Councillor may have a DPI in relation to a planning application in a number of circumstances affecting them or a relevant person. Examples include, but are not limited to:
- An application for development of a property owned or leased by the Councillor or a relevant person;
 - An application for development of land owned by the Councillor's employer or a relevant person's employer;
 - An application for development of a property which the Councillor or a relevant person occupy by way of licence.
- 3.5 Unless a Councillor has received a dispensation from Medway Council, he or she must not participate in a discussion or vote on any application in which he or she or a relevant person has a DPI.
- 3.6 The Localism Act 2011 does not *require* the disclosure at a meeting of a DPI if the interest already appears on the register. Councillors need to be cautious about pending notifications (where the Monitoring Officer has been notified but the register has not yet been updated). There is an ongoing legal obligation to disclose at meetings until the register has been updated and therefore, in cases of doubt the Councillor should disclose at the meeting. In

any event, Councillors may voluntarily declare an ~~an -DPI or other~~ interest at a meeting, even where there is no legal obligation to do so.

- 3.7 The Members' Code requires Councillors to withdraw from the room at a meeting during a discussion ~~and vote upon/about~~ an issue in which they have a DPI. Failure to comply with this requirement will not be a criminal offence but will be a breach of the Members' Code and could potentially taint a planning decision and leave it susceptible to a challenge by way of judicial review.
- 3.8 There are no longer any exemptions allowing Councillors who have a DPI to speak where a member of the public would be allowed to speak. Therefore where a Councillor has a DPI (either him/herself or through a relevant person) he or she may not participate in the debate or vote on a planning application and must withdraw from the room. This applies whether or not the Councillor is wishing to speak as a member of the committee, as a ward councillor or as a private individual.
- 3.9 Therefore if a Councillor has a DPI in a matter being considered at a Committee (either his or her own interest or through an interest of a relevant person) he or she **must**
- Declare the interest verbally at the meeting as soon as he or she becomes aware of it, if it is not already registered on the Register of Member Interests
 - If it is declared at the meeting under the requirement above, ensure that the Monitoring Officer is notified of the interest within 28 days of the meeting, for purposes of registration on the Register of Member Interests
 - Withdraw from the room and not participate in or give the appearance of participating in the debate or the vote
 - Not be present in the room to represent ward or objectors/supporters views

and a Councillor **may**

- Declare the interest verbally at the meeting even if it already appears on the Register of Member Interest

~~Subsequent sections of this Planning Code give advice about more indirect interests in a planning application.~~

4. Predetermination and Bias

- 4.1 Councillors must also be aware of and act within the rules on predetermination and bias. Avoidance of bias or predetermination is a principle of natural justice which has evolved through the courts, although s25 of the Localism Act 2011 is also relevant. Even if a Councillor does not have a DPI or is not acting in breach of the Members' Code he or she may cause a decision to be invalid if he or she participates while predetermined or biased. The rules regarding predetermination and bias are likely to be more strictly applied where the Council is making "quasi-judicial" decisions, such as the

determination of a planning application, than in the case of other decisions to be made by the Council.

- 4.2 The basic legal position is that a Councillor should not take part in making a decision on a planning matter if he or she is **biased** or has **predetermined** the matter. Councillors should bring an unbiased, properly directed mind to the consideration of any matters before them at Committee. This does not mean that Councillors are not entitled to have and to express opinions about general planning matters, or planning cases. However, they must approach, and must be seen to approach, matters before them with an open mind.
- 4.2 In this respect a distinction is to be drawn between those Councillors who are making the decision (i.e. speaking and voting as part of the committee) and those Councillors seeking merely to influence the decision (i.e. making representations as a Ward Councillor). The prohibition in respect of predetermination or bias only affects those actually making the decision. A Councillor who has predetermined or who is biased may still speak as a Ward Councillor (provided that he or she does not also have a DPI).

Predetermination

- 4.3 The law also makes a distinction between *predetermination*, which rules out participation in decision-making and *predisposition*, which does not.
- 4.4.1 A Councillor is entitled to have and to express views on local matters, both general planning matters and more specific applications. These views may indicate that a Councillor has a predisposition towards a particular policy or viewpoint. This is perfectly acceptable and a Councillor with a predisposition may take part in decision-making.
- 4.5 A predisposition will move on to becoming predetermination if, in relation to any matter before the Committee, a Councillor has taken a stance which indicates that he or she has finally closed his or her mind on the matter and that nothing that he or she hears at Committee will alter his or her position.
- 4.6.1 Section 25 of the Localism Act 2011 expressly provides that a Councillor shall not be taken to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view the he or she took, or would or might take, in relation to a matter. Therefore a Councillor will not have predetermined merely because he or she has made statements about a planning application in the past. However, this does not mean that a Councillor is free to say or do *anything* and still participate in the debate and vote. If by his or her actions and words the Councillor makes it clear that he or she will be voting a certain way no matter what information is presented at the Committee, then he or she will have predetermined and should not take part in the decision making.
- 4.7 There is acceptance that a Councillor may legitimately consider matters in several capacities as different factors may apply to different decisions. Where premises require both planning permission and a licence, Councillors may be asked to sit on both the Planning Committee and a Licensing Hearing Panel.

While the statutory regimes in such cases are different, often the factors to be taken in to account can be similar. In these circumstances, Councillors should carefully consider whether anything they have done or said in making the earlier decision would demonstrate a pre-determination of the second decision. If that is the case, the Councillor should not take part in the decision making at the second committee.

Bias

- 4.8 A Councillor should not be party to decisions in which he is actually biased or gives the appearance of being biased, to the reasonable observer. The test for the appearance of bias is whether a fair minded and informed observer, having considered the facts, would conclude that there was a possibility that the decision maker was biased.
- 4.9 Bias may arise by virtue of a Councillor being closely connected with a person who has a vested interest in the application – either the applicant or an objector. This may result from a personal connection, such as an applicant being a relative or friend, or result from the Councillor espousing a particular viewpoint (e.g. by being part of a lobby group). The role of the Committee is to consider applications in accordance with the legislation and to balance the interests of persons with competing views and this may not be possible where a Councillor is closely connected with a particular party.
- 4.10 In addition, circumstances which raise the possibility of bias may also lead to an accusation of a breach of the Members' Code, as the Members' Code states that Councillors must act solely in the public interest and should never improperly confer an advantage or disadvantage on any person or act to gain financial or other material benefits for themselves, their family, friends or close associates. Where this might occur, Councillors should not take part in the decision-making

Specific areas of guidance

4.11 *Membership of a Parish Council*

A Councillor who is also a member of a Parish Council which has been consulted on a planning application is not automatically debarred from participating in a planning decision at Medway even where he or she may have sat on the relevant parish planning committee. However, the following key principles should be observed if a Councillor is to participate in the decision-making at Medway:

- Careful consideration must be given as to whether a reasonable and informed member of the public would believe that the Councillor was coming to the decision at Medway without a fixed view. Strong opposition or support to an application at the parish meeting would indicate that a Councillor had predetermined and therefore debar that Councillor from voting at the Committee in Medway

- If speaking at the Parish Meeting the Councillor should make it clear that what he or she is saying is based on the limited information available at that stage and that the Councillor will review the matter at the Medway meeting.

If a planning application significantly affects the Parish Council (e.g. the Parish Council is the applicant or the application affects land owned by the Parish Council), it is likely that a fair minded and informed observer might consider the Councillor to be biased as a result of his membership of the Parish Council and therefore in those circumstances a Parish Councillor should not take part in the debate or vote on such an application.

4.12 Lobbying by Councillors

- 4.12.1 Councillors can, of course, lobby and campaign on particular developments, but they should recognise that this may remove them from the decision making process.
- 4.12.2 If a Councillor leads, represents or is a member of a group whose primary purpose is to lobby to promote or oppose a particular development, he or she will be considered to have predetermined an application relating to that development.
- 4.12.3 The position in 4.12.2 is distinct from membership of general interest groups, which reflect a Councillor's area of interest, e.g. the RSPB, English Heritage or the Ramblers Association. If that organisation has made representations on an application, but the Councillor has not been involved in preparing those representations, he or she will not have predetermined merely due to that membership.
- 4.12.4 Councillors should not excessively lobby other Councillors regarding their views on planning applications, nor should they, outside of the Committee, try to persuade other Councillors how to vote.
- 4.12.5 Councillors should not decide or discuss how to vote on planning applications at political group meetings or lobby other Councillors to do so. Political group meetings should never dictate how Councillors vote on planning applications.

4.13 Representations from Councillors at the consultation stage

Councillors who wish to take part in the debate and vote at a Committee should refrain from making representations as part of the consultation process, as this may imply predetermination. Councillors may, however, exercise their rights to refer an application to the Committee and then take part in the debate and vote at the Committee. In making such a referral Councillors must inform the [Head of Planning/Development Manager in writing](#) of the [planning](#) reasons for referral to committee [\(note just because they have been asked to refer to committee by a particular individual or group is not a valid planning reason for referral\)](#), and should carefully consider how they express those reasons.

4.14 Lobbying of Councillors

4.14.1 Lobbying is a normal and perfectly proper part of the political process. Those who may be promoting or affected by a planning decision will often be seeking to influence it through an approach to their elected ward Councillor, another Councillor or a member of the Committee. However lobbying can, where a Councillor is a member of the Committee which will determine the application, lead to the integrity and impartiality of a Councillor being called into question. This can in turn affect the validity of a planning decision.

4.14.2 A Councillor who wishes to participate in the determination of a planning application should explain to persons lobbying or attempting to lobby that whilst they can listen to what is said it would prejudice their impartiality and ability to participate in the decision if they give a firm statement of how they intend to vote or express strong sympathies with a point of view in advance of the meeting. For the avoidance of doubt a Councillor will not have predetermined

- by just listening to viewpoints from residents or interested parties;
- by making comments which fall short of prejudging the issue;
- by seeking information through appropriate channels;
- by acting as a vehicle for the expression of views as a ward Councillor providing he or she has not committed to vote in accordance with those views or that he or she is not acting as an advocate for a particular viewpoint.

4.14.3 When a Councillor participates in a making a planning decision, his or her overriding duty is to the community as a whole and not just people in his or her ward. As decisions need to be taken impartially a Councillor should not improperly favour or appear to improperly favour any person, company, group or locality. To do so is likely to be a breach of the Members' Code.

4.14.4 In addition to the requirement set out in the Members' Code to declare any gift or hospitality with an estimated value of at least £100, Councillors should not accept gifts or hospitality from any person involved in or affected by a planning application. It is advisable to let the Monitoring Officer know if you feel you have been exposed to excessive lobbying or offers of gifts or hospitality linked to a planning application.

4.14.5 It is good practice for Councillors to

- forward copies of lobbying correspondence to the Development Manager;
- advise the Development Manager of any offers of planning gain or constraint on development made to them;

4.15 Contact with applicants, developers and objectors

4.15.1 Councillors should refer those who approach for assistance on planning, procedural or technical matters to relevant officers.

4.15.2 As community leaders and local representatives Councillors will want to be involved in relevant public meetings, pre-application discussion and policy production. However, this may create some risks for councillors who are members of the Committee, and for the integrity of the decision making process. Councillors will be able to be involved provided that they adopt the following precautions.

- Councillors wishing to take part in the debate and vote at Committee should avoid agreeing to formal or informal meetings with or presentations by applicants, developers or groups of objectors, unless these are organised by officers.
- At any such organised meetings or presentations [councillors can ask questions to seek clarification and make comments/raise concerns but should not go so far as to indicate how they would vote were the proposal to come to Committee questions should be limited to those necessary to clarify a Councillor's understanding of proposals.](#)
- It must be remembered that the presentation is not a part of the formal planning process. . All parties will be advised the meeting is not a decision-making meeting.
- A presentation is a form of lobbying and Councillors who will be determining the application should not express views on how they will vote, although is perfectly acceptable to ask questions and give general and preliminary feedback.
- If a Councillor is genuinely unable to avoid contact from an applicant or objector outside of a meeting or presentation organised by officers he or she should inform the applicant/objector that he or she will not be able to give a view before consideration at the Committee and should keep a record of what was discussed.

4.16 Policy formulation by the Council

4.16.1 The role of the Planning Committee is to determine applications, in line with the relevant statutory requirements (e.g. s38 of the Planning & Compulsory Purchase Act 2004 in relation to planning applications). It is the role of Cabinet and full Council to develop planning policy. While the Planning Committee does not have a consultation role in terms of emerging policy within its terms of reference, members of the Committee may sit on other committees (such as the Regeneration Culture and Environment Overview & Scrutiny Committee or the ~~Local Development Framework~~[Development Plans](#) Cabinet Advisory Group)) which do have such a consultative role. In addition, there are all member briefings on planning policies, where Councillors can express views.

4.16.2 Councillors may take part in both policy formulation and determining planning applications. However, when attending meetings on policy formation Councillors should follow the guidance on pre-determination if they wish to take part in subsequent decisions on planning applications. This will be particularly relevant where the policy being formulated is site specific where the policy may address the desirability of certain types of development on a particular site.

4.17 Site Visits

4.17.1 Site visits can be a valuable part of the planning process. However they should normally only be requested where there are definite benefits, for example:

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection.
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

4.17.2 No hospitality should be accepted at site visits.

4.17.3 Councillors should endeavour to keep together as a group and not engage individually in discussions with any applicants, objectors or third parties who may be present.

4.17.4 Councillors who wish to take part in the decision-making at Committee should not express views on the application to anyone present.

4.17.5 It is acceptable to ask officers at the site visit questions or to seek clarification on matters relevant to the site inspection.

4.17.6 The site visit should be properly recorded [in terms of which councillors attended and a summary of the visit](#) and reported back to the Committee.

4.17.7 Councillors who wish to determine an application should not enter a site subject to a planning proposal other than as part of an official site visit even in response to an invitation.

4.17.8 A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.

4.17.9 All Councillors should remember the purpose of the site visit and should refrain from making comments not relevant to the application to be considered by the Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Councillors should not treat it as such.

4.17.10 The Chairman of the site visit may ask a Councillor to leave the site visit if he or she is not complying with this Planning Code or the Site Visit Protocol.

4.17.11 The procedure for site visits is set out in the protocol for site visits attached as an appendix to this Planning Code and all Councillors shall comply with that protocol.

4.18 Contact with Officers

- 4.18.1 General guidance is given in the protocol on member/employee relations in the constitution and that is not repeated here.
- 4.18.2 Councillors should not put pressure on officers to put forward a particular recommendation. However this does not prevent a Councillor asking questions or submitting views to a relevant officer.
- 4.18.3 Officers must act in accordance with the employee code of conduct and any relevant professional codes of conduct, for example the Royal Town Planning Institute's code of professional conduct. As a result planning officers views will be presented on the basis of their overriding professional obligation of professional independence which may on occasion be at odds with the views, opinions or decisions of the Committee or its members.

4.19 Planning applications by Councillors and officers; and Council development

- 4.19.1 Proposals to the Council by serving and former Councillors and officers and members of their family or persons with whom they have a close association can easily give rise to suspicions of impropriety, if not handled transparently. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or planning policy proposals.
- 4.19.2 Councillors (and officers involved in the planning process) who submit proposals should notify the [Head of Planning in writing](#) ~~Development Manager~~ of the proposal and play no part in its processing or determination and avoid contact, whether direct or indirect with members of the Committee concerning the application. Failure by a Councillor to comply with these principles could be a breach of the Members' Code.
- 4.19.3 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Councillors should carefully consider using agents to submit and take forward their own applications.
- 4.19.4 Serving Councillors and officers should avoid acting as agents for people pursuing a planning matter and where they do should play no part in the decision making process for that proposal.
- 4.19.5 All proposals submitted by Councillors or by officers involved in the Development Management process are required to be decided by the Committee and not dealt with by officers under delegated powers. Councillors considering an application must of course consider whether the nature of any relationship with the Councillor submitting the planning application could lead to an accusation of bias. Mere membership of the same political group is unlikely to lead to an appearance of bias, but a close friendship could.

4.20 Development proposed by the council or a council owned company

4.20.1 Planning legislation allows the Council to submit and determine proposals for development that it proposes to carry out itself. Council owned companies also submit proposals that are decided by the council.

4.20.2 Proposals submitted by the Council or a Council owned company shall be considered in the same way as those by a private developer.

4.20.3 Members of the Planning Committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare a non-registerable interest and take no part in the discussion and determination of that proposal.

4.20.4 Officers who are directly involved in the preparation of development proposals shall not determine planning applications in respect of such proposals.

5. Decision making

5.1 Councillors making planning decisions must

- come to meetings with an open mind and demonstrate they are open minded;
- comply with section s38 Planning & Compulsory Purchase Act 2004 and make decisions in accordance with the development plan unless material considerations indicate otherwise;
- not vote or take part in the discussions at Committee on a proposal unless present to hear the entire debate including any officer introduction/presentation;
- come to a decision only after due consideration of all information reasonably required upon which to base such a decision;
- request further information if it is felt there is insufficient information before the Committee to reach a decision;
- where proposing, seconding or supporting a decision contrary to officer recommendation, identify the planning reasons behind the decision before the vote is taken which may have to be justified in the event of an appeal or other challenge (and in the event of a proposal to grant planning permission contrary to officer recommendation propose relevant conditions and reasons for conditions to be attached to the planning permission). If Councillors are unable to do this immediately, they should request an adjournment or a deferral in order to seek advice and/or formulate the reasons/conditions.

- 5.2 The [Planning](#) Committee has agreed that where the statutory consultation period for a planning application has expired prior to the date of the Committee at which the application is to be considered, no representations shall be accepted for consideration by the Committee unless they are received within the [Planning Service Development Management department](#) before 12 noon on the day before the date of the Committee at which the application is to be considered.

6. Training

Councillors should not participate in decision-making meetings dealing with planning matters unless they have attended any training prescribed by the Monitoring Officer.

<u>PROTOCOL FOR MEMBER SITE VISITS</u>		OP800	Issue no 003
		Date :	
1.	<p><u>Purpose</u></p> <p>To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.</p>		
2.	<p><u>Scope</u></p> <p>The conduct of any site visit to be undertaken by members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.</p>		
3.	<p><u>Responsibilities</u></p> <p>Overall responsibility lies with the Development Manager (DM). Specific duties are carried out by Principal Planners (PP), Senior Planners (SP), Planners (PO), Case Officers (CO), Democratic Services Officers (DSO) and the Democratic Services Support Officers (DSSO) in Democratic Services.</p>		
4.	<p><u>Procedure</u></p>	Action	Dec
4.1	<p>The Planning Committee may resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</p> <ul style="list-style-type: none"> ● Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or ● There are significant policy or precedent implications and specific site factors need to be carefully addressed <p>Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal which should only be done at Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Members should not treat it as such. Members should concentrate on the aspects of the application in question which required the Site Visit</p> <p>The DM or officer attending the Committee and DSO should note the reasons for the deferral for the minutes.</p>		PC minutes
		DM/ DSO	

–PROTOCOL FOR MEMBER SITE VISITS		OP800	Issue no-003
		Date :-	
	<u>Procedure</u>	Action	Doc
4.2	As soon as possible following the meeting, and at least within one working day, the DM should inform the case officer that the item has been deferred.	DM	
4.3	<p>The CO should immediately</p> <ul style="list-style-type: none"> ▪ retrieve the file and ensure that a copy of the report to the Committee is added to it marked as “Deferred for a site visit” and the date of the meeting. ▪ advise the DSSO of the names and addresses of persons to be notified of the date and arrangements for the site visit. ▪ carefully check both the computer (20/20) record and the application file. Persons to be notified are: <ul style="list-style-type: none"> ○ The applicant and/or agent ○ Any person who has made representations including local residents, any Parish Council, any Amenity or Residents Society or representative group, and any consultee who has responded ○ Any other officers of the Council from other sections/departments needed to advise Members on specialist aspects <p>Special provisions may need to be made such as pegging out a building, an area of the site to be cleared, or Members attending need to wear boots or other particular clothing. The CO should advise DSSO of such factors to pass on to those attending.</p>	CO	
4.4	DSSO to liaise with the Chairman and Planning Spokesperson to agree a date and time for the site visit (SV); then contact the agent/applicant by telephone to check that this is possible in terms of obtaining access to the site. The DSSO should ensure that the agent/applicant (if not the landowner) has the landowner’s permission for the SV.	DSSO	
4.5	The DSSO should then write to all Councillors and the persons to be notified and the DM, PP and CO advising of the date and time of the SV. The letter should include advice that the purpose of the SV is for Members to understand the physical factors at the site although they will hear representations from interested parties. The visit is not a decision taking mechanism and there will be no vote or resolution at the SV.	DSSO	

–PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 003
	Date :	

	<u>Procedure</u>	Action	Doc
4.6	The DSSO will supply CO with an attendance sheet which the CO should ensure is signed by Members at the site visit	DSSO/ CO	
4.7	The SV will be attended by the CO, PP or DM who should ensure that he/she takes the file, a scale rule, mobile phone and any necessary equipment needed to explain the proposal and is appropriately dressed. The CO/PP/DM should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.	CO/ PP/ DM	
4.8	The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PP/DM will be there to advise on procedures and protocol. The visit will follow the following format: <ul style="list-style-type: none"> • The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered. • The CO/PP/DM will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached. • The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PP/DM or the applicant/agent – to be decided by the Chairman • The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time. <p>Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.</p>	CO/ PP/ DM	

–PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 003
	Date :	

	Procedure	Action	Dec
	<p>When the Chairman considers that the time is appropriate he/she will announce that the site visit is formally closed.</p> <p>Note:</p> <p>A. During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear.</p> <p>B. Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</p> <p>C. The Chairman of the SV may request a Councillor to leave the SV if he or she does not comply with this protocol and/or the Planning Code.</p> <p>D. The Chairman may call a halt to any SV if there is unruly or abusive behaviour on the part of anyone present.</p>		
4.9	The CO/PP/DM will make a note of the persons attending the SV. This note will be added to the supplementary agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.	CO/ PP/ DM	Supp. Agenda
4.10	The CO/PP/DM will send, email or fax the attendance sheet to Members Services.	CO/ PP/ DM	

<u>PROTOCOL FOR MEMBER SITE VISITS</u>	<u>OP800</u>	<u>Issue no 009</u>
	<u>Date :</u>	<u>05/02/15</u>

1. Purpose

To ensure consistent and appropriate procedures are followed in the conduct of Member site visits arising as part of the consideration of a planning application, or other development by the Planning Committee.

2. Scope

The conduct of any site visit to be undertaken by Members of the Planning Committee as part of the consideration leading to the determination made under the Planning Acts including the determination of any application for planning permission, Listed Building Consent, confirmation of a Tree Preservation Order etc. and the expediency of taking enforcement action.

3. Responsibilities

Overall responsibility lies with the Head of Planning (HoP). Specific duties are carried out by Planning Managers (PM), Senior Planners (SP), Case Officers (CO), Democratic Services Officers (DSO) and the Democratic Services Support Officers (DSSO) in Democratic Services.

4. Procedure

	<u>Action</u>	<u>Doc</u>
<u>4.1</u>	<u>The Planning Committee may resolve to defer a decision on a planning application or other planning matter in order that a site visit (SV) can take place to assist the consideration. It should be noted that site visits should normally only be agreed where:</u>	<u>PC</u> <u>minutes</u>

- Particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection and/or
- There are significant policy or precedent implications and specific site factors need to be carefully addressed.

Members should note that the site visits are for fact-finding reasons to assist Member deliberations and are not for discussing the merits of the proposal, which should only be done at Committee. The purpose of a site visit is to gather information material to the planning application, it is not a general public meeting and Members should not treat it as such. Members should concentrate on the aspects of the application in question which required the site visit.

The HoP or officer attending the Committee and DSO should note the reasons for the deferral for the minutes.

	<u>HoP/</u> <u>DSO</u>
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PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 009
	Date :	05/02/15

<u>Procedure</u>	<u>Action</u>	<u>Doc</u>
4.2 <u>As soon as possible following the meeting, and at least within one working day, the HoP should inform the case officer that the item has been deferred.</u>		HoP
4.3 <u>The CO should immediately</u> <ul style="list-style-type: none"> ▪ <u>retrieve the file and ensure that a copy of the report to the Committee is added to it marked as ‘Deferred for a site visit’ and the date of the meeting.</u> ▪ <u>advise the DSSO of the names and addresses of persons to be notified of the date and arrangements for the site visit.</u> ▪ <u>carefully check both the computer (ldox) record and the application file. Persons to be notified are:</u> <ul style="list-style-type: none"> ○ <u>The applicant and/or agent</u> ○ <u>Any person who has made representations including local residents, any Parish Council, any Amenity or Residents Society or representative group, and any consultee who has responded</u> ○ <u>Any other officers of the Council from other sections/departments needed to advise Members on specialist aspects</u> <p><u>Special provisions may need to be made such as need to use a megaphone, pegging out a building, an area of the site to be cleared, or Members attending need to wear boots or other particular protective clothing. The CO should advise DSSO of such factors to pass on to those attending.</u></p>		CO
4.4 <u>DSSO to liaise with the Chairman and Planning Spokesperson to agree a date and time for the site visit (SV); then contact the agent/applicant by telephone to check that this is possible in terms of obtaining access to the site. The DSSO should ensure that the agent/applicant (if not the landowner) has the landowner’s permission for the SV.</u>		DSSO
4.5 <u>The DSSO should then write to all Councillors and the persons to be notified and the HoP, PM and CO advising of the date and time of the SV. The letter should include advice that the purpose of the SV is for Members to understand the physical factors at the site although they will hear representations from interested parties. The visit is not a decision taking mechanism and there will be no vote or resolution at the SV.</u>		DSSO
4.6 <u>The DSSO will supply CO with an attendance sheet which the CO should ensure is signed by Members at the site visit</u>		DSSO/ CO

PROTOCOL FOR MEMBER SITE VISITS	OP800	Issue no 009
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		Date :	05/02/15
<u>Procedure</u>	<u>Action</u>	<u>Doc</u>	
<p><u>4.7</u> <u>The SV will be attended by the CO, PM or HoP who should ensure that he/she takes the file, a scale rule, tape measure, mobile phone, megaphone and any necessary equipment needed to explain the proposal and is appropriately dressed.</u></p> <p><u>The CO/PM/HoP should ensure that he/she arrives at the site in good time. If it is the first SV of the day he/she should arrive 10 minutes before the official start time to be able to deal with any concerns from members of the public or non-Council attendees.</u></p>	CO/ PM/ HoP		
<p><u>4.8</u> <u>The site visit will be conducted by the Chairman of the Planning Committee or their nominated deputy but the CO/PM/HoP will be there to advise on procedures and protocol. The visit will follow the following format:</u></p> <ul style="list-style-type: none"> <u>• The Chairman will call the session to order and explain the reason for the visit and the procedure to be followed making it clear that no decision will be taken and the date of the meeting where the application will be re-considered.</u> <u>• The CO/PM/HoP will explain the application proposal or the development under consideration; summarise the representations received; identify the planning issues and how the officer recommendation has been reached.</u> <u>• The Chairman will ask the applicant/agent if they wish to add any points; ask if any members of the public/other attendees wish to comment or ask questions, ask Committee Members if they wish to ask questions or seek points of clarification, then questions will be fielded either by the Chairman, the CO/PM/HoP or the applicant/agent – to be decided by the Chairman</u> <u>• The Chairman will close that part of the visit, confirming that no decision will be taken and the date of the meeting when the application will be next considered but that no further comments will be heard at that time.</u> <p><u>Members of the Committee will look at the site visiting those parts deemed necessary including any vantage points from neighbouring property.</u></p> <p><u>When the Chairman considers that the time is appropriate he/she will announce that the Site Visit is formally closed.</u></p>	CO/ PM/ HoP		

<u>PROTOCOL FOR MEMBER SITE VISITS</u>		<u>OP800</u>	<u>Issue no 009</u>
		<u>Date :</u>	<u>05/02/15</u>
<u>Procedure</u>	<u>Action</u>	<u>Doc</u>	
<p><u>4.9</u> <u>A site visit is not a formal meeting of the Committee and therefore a Councillor with a Disclosable Pecuniary Interest is not debarred from attending. However, such a Councillor must take care to ensure that (i) nothing he or she does at the site visit breaches the Members' Code and (ii) he or she does not imply that he or she will be part of the decision making process at Committee.</u></p> <p><u>See Point 3 of the Members Code of Practice via the following link :</u> http://www.medway.gov.uk/pdf/5.02%20-%20Members%20planning%20code%20of%20good%20practice21%20August%202013.pdf</p> <p><u>During the SV Members must stay together as a group to ensure that there is no opportunity for individual lobbying and all are able to consider the development on the basis of the same information. If there are any further questions they should be addressed to the Chairman so that they can be answered in a proper manner so that all can hear.</u></p> <p><u>Members must be aware that they have no powers of entry and can only enter land or a building at the agreement of the owner/occupier. Members of the public have no rights to accompany the Councillors visiting the site and likewise may only enter land or a building with the permission of the owner/occupant.</u></p> <p><u>The Chairman of the SV may request a Councillor to leave the SV if he or she does not comply with this protocol and/or the Planning Code.</u></p> <p><u>The Chairman may call a halt to any SV if there is unruly or abusive behaviour on the part of anyone present.</u></p>	<u>CO</u>		
<p><u>4.10</u> <u>The CO/PM/HoP will make a note of the persons attending the SV. This note will be added to the Supplementary Agenda advice sheet for the next Committee meeting together with a brief summary of the issues raised at the SV.</u></p>	<u>CO/PM/HoP</u>	<u>Supp. Agenda</u>	
<p><u>4.11</u> <u>The CO/PM/HoP will send or email the attendance sheet to DSSO.</u></p>	<u>CO/PM/HoP</u>		

Employee scheme of delegation
Section 8, paragraph 8.1

8. Director of Regeneration, [Community and Culture](#), [Environment and Transformation](#)

8.1 Planning:

- To manage the Council's functions in relation to the planning function, listed building consent, building preservation, conservation areas, tree preservation, enforcement and planning contravention, purchase notices, high hedges and hedgerows in compliance with current legislation and Council policy;
- To determine applications for planning permission except in the following circumstances:
 - (i) Where the applicant is the Council and the proposed development is a major proposal or for non-operational purposes.
 - (ii) Where the applicant is a member of the Council or an officer directly or indirectly involved in the planning process.
 - (iii) Where the Director of Regeneration, [Community and Culture Environment and Transformation](#) refers the application to the Planning Committee (eg where the proposals are a significant departure from the development plan or otherwise are of a strategic nature in the context of the Council's planning and development policies).
 - (iv) Where the proposal has other major implications for the authority.
 - (v) Where a member of the Council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases members should identify the material planning considerations to warrant consideration by Committee.
 - (vi) Where a parish council has within 21 days of the publication of the weekly list of planning applications requested that an application be determined by Committee. In these cases Parish Councils should identify the material planning considerations to warrant consideration by Committee, [otherwise the Director of Regeneration, Culture, Environment and Transformation will deal with the application.](#)
 - (vii) Where three or more relevant letters of representation are received [\(which may include letters from an Amenity Society but must also include at least two from separate households in the vicinity of the site\)](#) ~~(from separate households)~~ contrary to the proposed [officer](#) decision or where one letter of representation is received from a Parish Council or a Residents' [Association/Society](#) ~~Society or Amenity Society~~ contrary to the proposed [officer](#) decision (except, in the case of a representation by a Parish Council [or a](#), a Residents' [Association/Society](#) ~~Society or an~~

~~Amenity Society~~, where the Director of Regeneration, ~~Community and Culture~~, Environment and Transformation, in consultation with the Chairman and Spokesmen of the Planning Committee, is of the opinion that the representation contains no reasonable planning grounds supporting the representation).

- To determine details reserved by conditions, minor amendments to proposals for which consent has been granted, applications for lopping or topping trees, to confirm or reject tree preservation orders where no more than three representations are received from separate households contrary to the proposed decision, applications on the direction of the Secretary of State in respect of a trunk road, applications for Certificates of Lawfulness of existing or proposed use and to determine applications submitted pursuant to s.10 of the Planning (Hazardous Substances) Act 1990;
- To contest planning appeals in accordance with Council or Committee policy including the appointment of appropriate legal and professional representatives;
- To submit observations upon proposals outside the Medway area upon which the Council has been consulted subject to prior consultation with members representing the wards adjoining the proposed development.