



Meeting: **SPECIAL MEETING OF THE AUDIT AND GOVERNANCE COMMITTEE**
Date: **THURSDAY 16 JULY 2015**
Time: **5.00PM**
Venue: *****MEETING ROOM 2*****
To: **Councillors M Jordan (Chair), I Reynolds (Vice Chair), K Arthur, D Buckle, Mrs J Chilvers, A Thurlow and P Welch.**

Agenda

1. Apologies for absence

2. Disclosures of Interest

A copy of the Register of Interest for each Selby District Councillor is available for inspection at www.selby.gov.uk.

Councillors should declare to the meeting any disclosable pecuniary interest in any item of business on this agenda which is not already entered in their Register of Interests.

Councillors should leave the meeting and take no part in the consideration, discussion or vote on any matter in which they have a disclosable pecuniary interest.

Councillors should also declare any other interests. Having made the declaration, provided the other interest is not a disclosable pecuniary interest, the Councillor may stay in the meeting, speak and vote on that item of business.

If in doubt, Councillors are advised to seek advice from the Monitoring Officer.

3. Minutes

To confirm as a correct record the minutes of the Audit and Governance Committee held on 17 June 2015 (pages 1 to 6 attached).

4. Chair's Address to the Audit and Governance Committee

5. Audit and Governance Committee Work Programme

To review the Work Programme for 2015/16 (pages 7 to 10 attached).

6. A/15/6 – Amendments to the Constitution

To consider potential amendments to the Constitution relating to Community Engagement Forums and the Planning Code of Conduct (specifically the rules relating to speaking opportunities at site visits). The Audit and Governance Committee is asked to provide comments to the Council in advance of the meeting to be held on 8th September 2015. (pages 11 to 44 attached).

Jonathan Lund
Deputy Chief Executive

Date of Next Meetings
29 September 2015
13 January 2016

Enquiries relating to this agenda, please contact Daniel Maguire on:
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Minutes

Audit and Governance Committee

Venue:	Committee Room
Date:	17 June 2015, 5pm
Present:	Councillors M Jordan (Chair), I Reynolds (Vice Chair), K Arthur (from agenda item 5), D Buckle, Mrs J Chilvers, J Thurlow and P Welsh.
Apologies for Absence:	None.
Officers Present:	Phil Jeffrey and Gail Stormont, Veritau; Cameron Waddell, Mazars; Karen Iveson, Executive Director (S151); Gillian Marshall, Solicitor to the Council (left after agenda item 8); and Daniel Maguire, Democratic Services Officer.
Public:	0
Press:	0

1. Declarations of Interest

There were no declarations of interest. Councillor Jordan asked that his position as Chair of the Southern Community Engagement Forum (CEF) be noted in relation to agenda item 8. He remained in the meeting during consideration of the item.

2. Minutes

It was noted that the membership of the committee had completely changed following the Annual Meeting of the Council and consequently there were no members present who had attended the previous meeting. The Democratic Services Officer advised that the responsibility for approving the previous minutes is with the current membership. In order that committee members could make an informed decision the previous

minutes had been seen by Councillors Cattnach and Pearson who were able to advise the committee that the minutes are an accurate record.

RESOLVED:

To receive and approve the minutes of the Audit and Governance Committee held on 15 April 2015, which were then signed by the Chair.

3. Chair's Address

The Chair welcomed the Councillors and officers to the first meeting of the municipal year. Phil Jeffrey and Gail Stormont from Veritau and Cameron Waddell from Mazars were introduced to the committee.

4. Start Time of Meetings 2015/16

RESOLVED:

To set the start time of Audit and Governance Committee meetings for 2015/16 at 5pm.

5. Audit and Governance Committee Work Programme 2015/16

The Chair presented the Work Programme for 2015/16 and invited comments. It was noted that the Programme can be updated throughout the year as the Committee requires. The Committee asked that the Work Programme be included as an agenda item at all subsequent meetings. It was noted that some dates referred erroneously to 2014/15.

RESOLVED:

- (i) Having made the necessary amendments to meeting dates, to approve the Work Programme for 2015/16;**
- (ii) To include the Work Programme as an agenda item at all subsequent meetings.**

6. A/15/1 – Annual Internal Audit Report 2014/15

Phil Jeffrey, Veritau, presented the report. He drew the committee's attention to paragraph 15 which recognises that the Council provides 'Substantial Assurance' in respect of risk management, governance and the control framework. Some weaknesses were identified in respect of Taxi Licensing, Partnerships, IT access controls and the compliance with

the Payment Card Industry Data Standard (PCI DSS), but actions are in hand to resolve these.

There are currently nine audit reports at draft stage and six that have been finalised since the last report to the Committee. In total 97.6% of reports had been completed to draft stage by the end of April 2015, which exceeds the target of 93%.

In response to a question from the Committee, the Executive Director (s151) was asked to provide details of a specific case relating to Council House repairs to the next meeting.

RESOLVED:

- (i) To approve the Annual Internal Audit Report 2014/15;**
- (ii) To ask the Executive Director (s151) to provide details to the next meeting about a specific case relating to council house repairs.**

7. A/15/2 – Amendments to the Constitution

The Solicitor to the Council presented a report proposing a number of actions relating to proposed changes to the Constitution. A handout was circulated and the Committee was guided through each proposal.

- a) Changes are required to the disciplinary processes for Statutory Officers (Chief Executive, s151 Officer and Monitoring Officer). These changes are required by the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 and must be made at the first ordinary meeting of Council after 11 May 2015. The changes provide for the dismissal of a protected officer to be approved by way of a vote at a meeting of the Council, subject to conditions set out in the briefing note provided by the Solicitor to the Council. To meet the requirements of the revised legislation the Solicitor to the Council proposed:
 - (i) That an Employment Committee be formed to undertake the role of the existing Appointments Committee and to conduct any investigation required before disciplinary action is taken against a protected officer. The membership of the committee to be politically balanced (currently 3:1) and to be the Leader of the Council, Deputy Leader of the Council, a non-Executive Councillor from the ruling group and the Leader of the Opposition Group. The terms of reference are as set out in the briefing supplied by the Solicitor to the Council.
 - (ii) That a standing Independent Panel be formed to advise the Council on dismissal of a relevant officer. The membership

of the panel to be the two independent persons appointed to advise the Council on matters of member conduct and standards.

- b) Amendments were proposed to the Financial Procedure Rules as part of a general updating of that document. A revised draft was circulated to the Committee. Attention was drawn to the increase in the level of in-year virement that can be approved under delegated power from £20,000 to £50,000 which would be consistent with the level of authority granted under the Contract rules. Authority will be limited, as now, to the s151 Officer. Attention was also drawn to the increase in the delegation limits on approving the sale of land to £50,000 in order to be consistent with other financial limits. This would be delegated to Directors in consultation with the s151 Officer.
- c) It was proposed that the role of monitoring the Council's use of the Regulation of Investigatory Powers Act for surveillance be added to the Terms of Reference of the Audit Committee. This would comply with guidance from the Home Office Code of Practice which suggests that member level review should take place at least annually.
- d) Changes were proposed to Article 10 (Community Engagement Forums); Part 3.6 (Responsibility for Functions – Community Engagement Forums) and Part 4 (Council Procedure Rules – Community Engagement Forums). A draft Code of Conduct for members of Community Engagement Forums was also circulated. The changes are required to ensure that the Council remains the Accountable Body for decision making, and that transparency and good governance are maintained.
- e) The Executive resolved on 4 June to ask the Audit Committee to review the Site Visit Section of the Code of Practice for Dealing with Planning matters, as concerns had been expressed about the ability of ward councillors to represent their constituents in such matters. The Solicitor to the Council explained the background to the most recent changes to the Code of Practice and set out the opportunities that currently exist for public participation in the planning process. Examples of practice in neighbouring authorities were circulated.
- f) The Committee was informed that the Government has issued a consultation paper on proposed changes to the Local Authority Functions and Responsibilities Regulations. As with the amendments proposed in (a) above, the Council will be required to update the Constitution as required by central government. In anticipation of this, the Solicitor to the Council advised that the Committee may wish to recommend granting delegated powers to

the Monitoring Officer to amend the Constitution when required to do so as a matter of law.

RESOLVED:

- i) To recommend that Council approve the amendments to the Constitution in parts (a), (c) and (f);
- ii) To recommend that Council approve the amendments to the Constitution in part (b) but notes that the Audit Committee did not have advance sight of the amendments;
- iii) To defer consideration of the amendments to the Constitution in parts (d) and (e) to a future meeting of the Audit Committee, and that they be included in the Work Programme for 2015/16.

8. Private Session

RESOLVED:

In accordance with Section 100(A)(4) of the Local Government Act 1972 and in view of the nature of the business to be transacted, to exclude the press and public from the meeting during discussion of the following items as there is likely to be disclosure of exempt information. The exempt information is that defined in paragraph 3 of schedule 12A being information relating to the financial or business affairs of any person, including that of the authority holding the information. It is in the public interest to exempt this information as it includes information about how the Council manages risk and specifically the risks that are being actively managed (including their likelihood, impact and mitigating actions) which, if disclosed, could allow third parties to use this information against the Council – for example targeting fraudulent activity in an area perceived to be low risk and therefore not actively managed – as such disclosure of the detail of risk management is not considered to be in the interests of taxpayers although inclusion on Audit Committee agendas and the coverage of the Annual Governance Statement, should provide assurance that risk is being managed effectively.

9. A/15/3 – Risk Management Annual Report 2014/15

Phil Jeffrey presented the report and drew the Committee's attention to parts 2.1 and 2.2 which list the reports brought before the Audit Committee during 2014/15 and what further work is planned during the coming year. Progress has been made in developing risk management

and work to ensure continuing proactive risk management will continue during 2015/16.

RESOLVED:

- (i) To note the report and;
- (ii) To endorse the actions of officers in managing risk

10. A/15/4 – Review of the Corporate Risk Register

Phil Jeffrey presented the report and drew the Committee's attention to items 2.2 and 2.3 which show a reduction in the number of risks with a score of 12 or more since the previous report in January 2015. In total there are fifteen risks on the register, which is a reduction of one since the previous report. It was confirmed that there are mitigating actions in place to control these risks and that these are closely monitored on an on-going basis.

Gail Stormont provided the Committee with an outline of Risk Registers and the Risk Matrix. Members of the Committee were provided with copies of the Risk Management Strategy, Information Risk Management Policy, Risk Management Guidance as well as a copy of the risk matrix.

The Chair asked that his thanks be recorded, on behalf of the Committee, for the excellent training provided so far this municipal year.

RESOLVED:

- (i) To note the report and;
- (ii) To endorse the actions of officers in managing risk

11. A/15/5 – Review of the Access Selby Risk Register

Phil Jeffrey presented the report and drew the Committee's attention to item 2.2 which confirms a reduction in the number of risks with a score of 12 or more. In total there are sixteen risks on the register, which represents no change on the previous position reported in January 2015. It was confirmed that there are mitigating actions in place to control these risks and that these are closely monitored on an on-going basis.

RESOLVED:

- (i) To note the report and;
- (ii) To endorse the actions of officers in managing risk

The meeting closed at 6.55pm

Audit Committee Work Programme 2015/16

Date of Meeting	Topic	Action Required
	<p><u>Committee Requested Item</u> Time of meetings</p>	To agree the start time of Audit Committee meetings for 2015/16
	<p><u>Committee Requested Item</u> Internal Audit Annual Report 2014/15</p>	To consider the Internal Audit Annual Report for 2014/15
17 June 2015	<p><u>Committee Requested Item</u> Risk Management Annual Report</p>	To consider the Risk Management Annual Report for 2014/15
	<p><u>Committee Requested Item</u> Review of the Corporate Risk Register</p>	To review the latest Corporate Risk Register
	<p><u>Committee Requested Item</u> Review of the Access Selby Risk Register</p>	To review the latest Access Selby Risk Register
16 July 2015	<p><u>Committee Requested Item</u> Constitutional Amendments</p>	To consider proposed constitutional amendments.

<p>29 September (Tuesday) 2015</p>	<p><u>Committee Requested Item</u> Information Governance Report</p>	<p>To receive an update on progress on implementing the IG Action Plan</p>
	<p><u>Committee Requested Item</u> Annual Governance Statement</p>	<p>To approve the Annual Governance Statement</p>
	<p><u>Committee Requested Item</u> Statement of Accounts (post audit)</p>	<p>To approve the Statement of Accounts</p>
	<p><u>Committee Requested Item</u> Mazars Audit Completion Report and Opinion on the Financial Statements</p>	<p>To receive the Mazars Audit Completion Report and opinion on Financial Statements</p>
	<p><u>Committee Requested Item</u> Counter Fraud Annual Report</p>	<p>To review the Counter Fraud Annual Report</p>
	<p><u>Committee Requested Item</u> Internal Audit Quarter 1+Report 2015/16</p>	<p>To review progress against the Internal Audit Plan</p>

<p><u>Committee Requested Item</u> Information Governance Report</p>	<p>To approve the Information Governance Annual Report</p>
<p><u>Committee Requested Item</u> Annual Governance Statement – Action Plan Review</p>	<p>To review progress against the AGS Action Plan</p>
<p><u>Committee Requested Item</u> Internal Audit Quarter 2+ Report 2015/16</p>	<p>To review progress against the Internal Audit Plan</p>
<p><u>Committee Requested Item</u> Annual Audit Letter</p>	<p>To receive the Mazars report on the 2014/15 Audit and Value for Money conclusion</p>
<p><u>Committee Requested Item</u> Audit of Grant Claims & Returns 2013/14</p>	<p>To receive the Mazars Audit report</p>
<p><u>Committee Requested Item</u> Review of Risk Management Strategy</p>	<p>To review the Risk Management Strategy</p>
<p><u>Committee Requested Item</u> Review of the Corporate Risk Register</p>	<p>To review the latest Corporate Risk Register</p>
<p><u>Committee Requested Item</u> Review of the Access Selby Risk Register</p>	<p>To review the latest Access Selby Risk Register</p>
<p><u>Committee Requested Item</u> External Audit Progress Report – Mazars</p>	<p>To review the progress by Mazars in meeting its responsibilities as the Council's External Auditor.</p>

13 January 2016

13 April 2016	<u>Committee Requested Item</u> Audit Strategy Memorandum and External Audit Progress Report – Mazars	To review the Audit Strategy and progress of the External Audit with Mazars
	<u>Committee Requested Item</u> Annual Governance Statement – Action Plan Review	To review progress against the AGS Action Plan
	<u>Committee Requested Item</u> Internal Audit Progress Report 2015/16	To review progress against the Internal Audit Plan for 2015/16
	<u>Committee Requested Item</u> Internal Audit Charter	To approve the Internal Audit Charter
	<u>Committee Requested Item</u> Internal Audit Plan 2016/17	To approve the Internal Audit Plan 2016/17
	<u>Committee Requested Item</u> Audit Committee Annual Report 2015/16 and Work Programme 2016/17	To approve the 2015/16 Annual Report and the 2016/17 Work Programme for the committee



Public Session

Report Reference Number A/15/6

Agenda Item No: 6

To: Audit and Governance Committee

Date: 16 July 2015

Author: Gillian Marshall Solicitor to the Council

Lead Officer: Jonathan Lund Deputy Chief Executive/Monitoring Officer

Title: Amendments to the Constitution

Summary:

Audit and Governance Committee considered proposals for the amendment of the Constitution at their meeting on 17 June 2015. The proposed changes to disciplinary procedures for senior officers required by law were made at full Council on 23 June. The remaining items approved by Audit and Governance are to be considered by Council in September 2015.

This report covers two items which Committee wished to consider further in more detail before providing views: CEF changes and the Planning Code of Practice – Site Visits section.

Recommendations:

To consider further potential changes to the constitution relating to CEFs and the Planning Code of Practice – Site Visits Section and provide comments for consideration by full Council

Reasons for recommendation

To provide the views of Audit and Governance Committee to Council.

1. Introduction and background

The Constitution was reviewed in 2014 in preparation for the reduction in the number of Councillors from 41 to 31. Notwithstanding that review, further changes are recommended. Any proposals should be aimed at the efficient

administration of business, speeding up decision making whilst maintaining the transparency and accountability required in good decision making.

2 The Report

Community Engagement Forums

- 2.1 Since 2009, the Community Engagement Forums (CEFs) have been a key part of the council's model and are therefore an integral part of the council's constitutional arrangements. As such, they are covered in Article 10 of the Constitution, Section 3.6 (Delegation of Functions), the Community Engagement Procedure Rules and the Code of Conduct for members of the Community Engagement Forum Partnership Board .
- 2.2 Since the five Community Engagement Forums (CEFs) were rolled out in July 2009 they have been working with community groups across Selby District to increase their role in influencing and delivering local services. There are opportunities for the CEFs to develop and deliver more in communities in line with the *stronger communities* agenda. Indeed, this is a key part of the Customer and Community model which Selby District Council is developing with North Yorkshire County Council.
- 2.3 In October 2014 a CEF Design Group, a working group (made up of councillors, third sector partners and council officers), was set up to consider redefining the CEFs in partnership with the third sector. The Design Group was set up to help shape the future of the CEFs and look at options for improving the governance arrangements which underpin the CEFs, given that the District Council is the accountable body. As part of the review process, the legal and constitutional issues were considered in detail in order to clarify the purpose and functions of the CEFs. The governance arrangements have been considered to ensure that any new arrangements are both legal and future proof. The results of that review are expected to come to Council in September 2015.
- 2.4 The review noted that there is a tension between the desire to make CEFs representative of their communities and as inclusive as possible and the legislation regarding decision making by the Council. When the CEFs were set up, it was intended that any 'decisions' of the Partnership Board would be given effect by directors using delegated powers. However, over time the requirements for such decisions to be recorded has increased and the council needs to be able to demonstrate this delegated decision making in an open and transparent manner. In November 2014, wording was added to Part 3 of the re-drafted Constitution as an interim measure stating 'the CEFs should assess and make recommendations to the appropriate budget holder for the allocation of funds from the budget made available by the Council to each CEF'. This clarified that directors are responsible and accountable for the

decision making process. The proposals now being considered move the Council from that interim position to a model with strengthened governance and accountability, more in line with the processes used to give effect to decisions of Local Enterprise Partnerships by their relevant accountable body.

- 2.5 There are currently limited guidelines for the CEFs on decision making, how funding can be assessed and allocated, financial management and conflicts/disclosures of interest for the Partnership Boards. The review also found a lack of guidance for the public on the procedure for making funding applications, how applications will be assessed and how funding decisions are reached in an open and transparent manner. The CEFs' individual Terms of Reference, funding guidelines and funding applications have been subject to individual changes by each Partnership Board leading to different processes depending on which CEF the application is made to. Whilst decisions should be led by local priorities which will be different in different areas, it is more transparent to administer a system where the over-arching processes are the same. It is suggested by the review that the Council produces a comprehensive package of consistent resources, documents and guidance notes that will apply to all CEFs so that they are functioning under the same rules and guidelines and thus making access to funds fair across the district.
- 2.6 Revised drafts of Article 10 (Community Engagement forums, Part 3.6 Delegation of Functions to CEFs), Community Engagement Procedure Rules and Code of Conduct for members of the CEFs are attached as Appendix A-D taking account of the views of the CEF Design Group.

Planning Site Visits

- 2.7 At their meeting in June 2015 the Executive also resolved to ask Audit and Governance Committee to look again at the Site Visit Section of the Code of Practice for dealing with Planning Matters in part 5 of the Constitution as concerns have been expressed about the ability of Ward Councillors to represent their constituents in such matters. The Current Planning Code of Conduct is attached at Appendix E. The current Code states that no opportunity for speaking, debate or giving opinions will be afforded to the Agent/Applicant, or other parties e.g. Ward Councillors, objectors except where the Chair permits a response to questions of fact from the committee.
- 2.8 It should be noted that public participation in the planning process is achieved via a combination of
- Advertising applications in line with national requirements
 - The provision of a weekly list of applications to Councillors
 - The ability of residents and councillors to object to applications.
 - The ability for Councillors to request that matters be considered by committee rather than via delegated decisions

- The ability of objectors and councillors to speak at the Committee meeting

Any amendment to permit representations at site visits would be in addition to this.

2.9 The previous provisions in the Code attached to the Constitution read

To avoid giving an impression of being lobbied, councillors should not listen to or talk to any individuals whilst on site, unless being addressed as a group. Any comments should be made to the whole group through the Chair.

The public, applicant or objector may attend the site inspection and will be invited by the Chair to draw Members' attention to any salient features or to any relevant factual information.

Other than to draw councillors' attention to any salient feature or to clarify a factual point, the public, applicant and objector will not be allowed to participate.

2.10 The new Code draws heavily on the 2013 update to the Local Government Association's 'Probity in Planning' guide which reflects changes introduced by the Localism Act 2011. It clarifies how councillors can get involved in planning discussions, on plan making and on applications, on behalf of their communities in a fair, impartial and transparent way. It states that national standards and local codes apply to site visits as well as committee meetings and recommends that Councils should have a clear and consistent approach on when and why to hold a site visit and how to conduct it. This should avoid accusations that visits are arbitrary, unfair or a covert lobbying device. Site visits should be for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

2.11 The Guidance indicates that the following points may be helpful in drawing up a local code :

- visits should only be used where the benefit is clear and substantial; officers will have visited the site and assessed the scheme against policies and material considerations already
- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be 'triggered' by a request from the ward councillor, the 'substantial benefit' test should still apply.
- keep a record of the reasons why a site visit is called.

A site visit is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers
- the comments of the applicant and objectors cannot be expressed adequately in writing or
- the proposal is particularly contentious.

2.12 It is clear that the Guidance seeks to protect the fairness of the process, ensuring that all parties have equal opportunities to present their case and that Councillors making the decisions should do so at the meeting and not in the heat of a site visit which is less formal, less controlled and not as well recorded. Decision making in that atmosphere is more likely to result in legal challenges that are not easily rebuffed.

2.13 In 2012 an Independent Advisory Group's (IAG) report in support of planning reform in Wales was published. Amongst its many findings the report recognised the critical role of planning committees in the planning system and recommended that research was required into how these committees could be made as efficient and effective as possible. Welsh Government Ministers then invited the Royal Town Planning Institute in Wales to draw together a group of experts to oversee a study into the operation of planning committees. The subsequent report recommended that a procedure for site visits should be included which did not allow public speaking. Further details are included in Appendix F

2.14 Locally the provisions of Codes in neighbouring authorities vary depending upon local preference and whether the Codes were adopted before or after the 2013 update to 'Probity in Planning' though all draw heavily on that Guidance. Further details of each authority are found in Appendix F.

2.15 There is therefore a degree of local discretion that can be afforded although the ability to use site visits to lobby or make representations is usually discouraged. An increase in the number of site visits (where such lobbying may occur) would have an impact on speed of decision making and whether the Council meets local and national performance targets on decisions made 'in time'.

3. Legal/Financial Controls and other Policy matters

3.1 Legal Issues

An up to date Constitution reduces the risk of legal challenges to the decisions of the Council.

3.2 Financial Issues

Controls will remain in place to ensure financial probity.

3.3 Impact Assessment

No other impacts have been identified

4. Conclusion

- 4.1 That Audit and Governance Committee should consider the proposals and provide comments and recommendations for full Council.

5. Background Documents

None

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Appendices:

Appendix A – revised draft Article 10 (Community Engagement forums),
Appendix B – revised draft Part 3.6 (Delegation of Functions to CEFs),
Appendix C - revised draft Community Engagement Procedure Rules
Appendix D – revised draft Code of Conduct for members of the CEFs
Appendix E - Planning Code of Practice
Appendix F – Practice Elsewhere

Article 10 – Community Engagement Forums

10.1 Community Engagement Forums (CEFs)

The Council will establish and support no less than 2 Community Engagement Forums.

10.2 Composition

Community Engagement Forums will be public meetings held periodically in each CEF area to discuss issues affecting that area.

Community Engagement Forum Partnership Boards will comprise all district ward councillors from the area concerned, statutory partners and co-opted members as defined in the CEF Procedure Rules.

The CEF Chair will be appointed by the Council as provided for in the CEF Procedure Rules. He/she need not be a member of Council and will automatically become a member of and Chair of the Partnership Board.

Each CEF Partnership Board shall appoint a Vice-Chair from amongst the members of the Partnership Board as provided for in the CEF Procedure Rules. The Chairman of Council, the Leader and Executive members shall not be appointed as CEF Chairs or Vice Chairs.

10.3 Role and Function

- (a) To provide an opportunity to raise, discuss and consider matters related to the well-being of the CEF's area, particularly, but not exclusively, those matters which are the responsibility of the local government authorities, their partner organisations and other organisations who provide services partly or wholly funded by public funds.
- (b) To assist in the planning and monitoring of local services.
- (c) To enable decision-making to be taken at a local level where this is practical and effective and in accordance with the scheme of delegation.
- (d) To assess and make recommendations to the appropriate budget holder for the allocation of funds from the budget made available by the Council to each CEF.
- (e) To develop, monitor and maintain the area Community Development Plan.
- (f) To support communities in their implementation of the Community Development Plan and solutions to issues and topics of local concern.

- (g) To contribute to the achievement of the aims and objectives of the Selby and North Yorkshire Strategic Partnership and the development and delivery of the Selby District Sustainable Community Strategy.

10.4 Conduct

The members of the CEF shall conduct themselves in accordance with the provisions of the Code of Conduct for Councillors or the Code of Conduct for Members of the CEF attached at part 5 of the Constitution as applicable under the CEF Procedure Rules.

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PART 3.6 - Community Engagement Forums**1 Purpose**

To provide a forum to raise, discuss and consider matters related to the well-being of the Forum's area, particularly, but not exclusively, those matters which are the responsibility of the local government authorities, their partner organisations and other organisations who provide services partly or wholly funded by public funds.

2 Membership

All Selby District ward councillors for the Forum area.

Representative of Statutory Partners as defined in the CEF Procedure Rules including all North Yorkshire County Councillors for the relevant division covering the CEF area.

Up to 4 co-opted representatives from town and parish councils in the Forum area (or such other number as the CEF shall determine save that the total number of co-opted members may not exceed 8)

Up to 4 co-opted other members who are community representatives (or such other number as the CEF shall determine save that the total number of co-opted members may not exceed 8)

3 Functions

- (a) To provide an opportunity to raise, discuss and consider matters related to the well-being of the CEF's area, particularly, but not exclusively, those matters which are the responsibility of the local government authorities, their partner organisations and other organisations who provide services partly or wholly funded by public funds.
- (b) To assist in the planning and monitoring of local services.
- (c) To enable decision-making to be taken at a local level where this is practical and effective and in accordance with the scheme of delegation.
- (d) To assess and make recommendations to the appropriate budget holder for the allocation of funds from the budget made available by the Council to each CEF.
- (e) To develop, monitor and maintain the area Community Development Plan.
- (f) To support communities in their implementation of the Community

Development Plan and solutions to issues and topics of local concern.

- (g) To contribute to the achievement of the aims and objectives of the Selby and North Yorkshire Strategic Partnership and the development and delivery of the Selby District Sustainable Community Strategy.

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COMMUNITY ENGAGEMENT FORUM PROCEDURE RULES**1. Community Engagement Forums (CEFs)****1.1 Structure of CEF Meetings**

CEF meetings will be structured in accordance with a decision of the CEF Partnership Board but the agreed arrangements shall provide for:

(a) Community Sessions:

- There will be a minimum of 4 community sessions per year.
- The community sessions must provide
 - a forum for all residents of the CEF area to raise concerns about public services provided by any public body having an influence on the quality of life of those living and working in the area.
 - A means of holding to account those who provide services in the name of the community.
 - A means of influencing the future shape of service delivery.
 - An opportunity for direct involvement in the provision of services and facilities for the benefit of the area.
 - A means of sharing information and gathering the views of the community.

(b) Business Sessions (the Partnership Board):

There will be a minimum of 4 Partnership Boards per year.

The Partnership Board will be responsible for:

- Setting the structure of meetings having regard to the need to include Community Sessions.
- Ensuring that the Community Sessions are adequately publicised in the local area covered by the CEF
- Making recommendations arising from issues discussed at community sessions to the Council and to partners.
- Developing, monitoring and maintaining the Community Development Plan for each CEF Area identifying and mitigating any risks.
- Determining the criteria by which applications to the CEF Community Fund will be assessed having regard to local priorities and the Community Development Plan.
- Making recommendations to the Council as accountable body for the making of grants from the Community Funds
- Reporting annually to the Council on the Community Development Plan and progress against it.

1.2 The Statutory Partners

The following statutory bodies have agreed to support CEFs in delivering a partnership response to community concerns:

- Selby District Council
- North Yorkshire County Council
- North Yorkshire Police
- North Yorkshire Fire and Rescue

All North Yorkshire County Councillors from divisions covering areas contained within the CEF and 1 representative of the other bodies (as notified from time to time by each partner) are co-opted onto the CEF as Statutory Partners.

Sub-Committees of the Partnership Boards may be created for specific purposes provided that

- The terms of reference of any sub-committee are notified to Democratic Services and
- The sub-committee is chaired by a District Councillor

1.3 Co-opted Members

In addition to the statutory partners listed in paragraph 1.2 there will be up to 8 co-opted partners with voting rights on the Partnership Board.

Normally the 8 would comprise up to 4 town or parish council representatives and up to 4 other community representatives co-opted by the Partnership Board, but the Partnership Board shall be free to determine a different number if it sees fit provided that the overall number of co-opted members does not exceed 8.

Co-opted Members will serve until the end of municipal year in which they are co-opted. They may be co-opted in successive municipal years without limit.

A Co-opted Member who fails to attend 3 successive meetings of the Partnership Board will be deemed to have resigned and can be replaced by the Partnership Board.

1.4 Number and coverage of CEFs

There shall be as many CEFs as the Council will, from time to time, determine (currently 5 CEFs) provided that every community in Selby District is included within a CEF area.

The boundaries of CEF areas will be co-terminus with Ward boundaries.

1.5 Appointment of Chair and Vice-Chair

The Council will appoint a Chair for each CEF who will hold office for the municipal year. The Chair of the CEF will also chair the Partnership Board.

The Chair need not be a District Councillor.

Where the Chair is not a District Councillor, he /she will on appointment the automatically become a co-opted member (unless he/she is a representative of a statutory partner).

The Chair may be removed by resolution at any ordinary meeting of Council.

Each CEF Partnership Board will appoint a Vice-Chair who will hold office for the municipal year.

If a CEF Chair or Vice-Chair ceases to be eligible to hold office, the Council shall appoint a new Chair or the CEF Partnership Board shall appoint a new Vice-Chair at its next meeting.

The Chairman of the Council, the Leader and any member of the Executive shall not be appointed Chair or Vice-Chair of any CEF during his/her period of office.

In the absence of the Chair the Vice-Chair will preside. In the event of the Chair and Vice-Chair not being present, members of the Partnership Board who are present at the meeting will elect a Chair for the meeting.

1.6 Meetings of Community Engagement Forums

(a) Frequency

Each CEF Partnership Board will draw up a schedule of meetings for the year ahead for approval by the Council and incorporation into the Schedule of Meetings for the start of each municipal year.

(b) Venue

The Council will make available premises for each CEF meeting and will take all reasonable steps to make sure that the venue is as accessible as possible for everyone who wishes to attend the meeting. Wherever practicable, meetings will take place at venues within the CEF area.

(c) Agenda

Notice will be given of the time and place of any meeting in accordance with the Access to Information Procedure Rules.

1.7 Attendance of non-members of CEFs at meetings

All councillors shall be entitled to attend the proceedings of any CEF and Partnership Board.

Councillors who do not represent an area within the CEF shall not vote and may only speak with the consent of the Chair.

1.8 Confidentiality

Reports to the Partnership Board which are not for publication under the Access to Information Procedure Rules on the grounds they contain confidential or exempt information shall be treated as confidential and shall not be disclosed by a CEF member.

1.9 Minutes of Community Engagement Forum and Partnership Board meetings

(a) Approval

Minutes of all CEF and Partnership Board meetings will be approved by the Partnership Board and signed as a correct record.

(b) Accuracy

Only the accuracy of the minutes may be questioned and an amendment put forward to propose a change of wording.

1.10 Councillors' Conduct

Councillors must conduct themselves at CEF meetings in accordance with the Code of Conduct for Councillors attached at Part 5 of the Constitution.

1.11 Conduct of Statutory Partners and Co-opted Members

Statutory Partners and Co-opted Members must conduct themselves in accordance with the Code of Conduct for Members of the CEF attached at part 5 of the Constitution.

1.12 Quorum

Meetings of the Partnership Board will be quorate if there is not less than one third of voting members present.

1.13 Method of Voting

Each voting member of the Partnership Board will have an equal vote. Voting shall be by a show of hands and matters will be decided by a majority decision of those present and voting in the room.

All voting procedures shall be in accordance with Rule 19 of the Council Procedure Rules.

CODE OF CONDUCT FOR MEMBERS OF THE COMMUNITY ENGAGEMENT FORUMS**PART 1 - GENERAL PROVISIONS****1. Scope**

A Statutory Partner or Co-opted Member of the CEF must observe this Code of Conduct whenever he/she:

- (i) conducts the business of the CEF;
- (ii) acts as a representative of the CEF.

Where a Member of the CEF acts as a representative of the CEF from another relevant body, he/she must, when acting for that other body, comply with that other body's Code of Conduct.

2. When the Code applies

This Code of Conduct shall not have effect in relation to the activities of a Member of the CEF undertaken other than in an official capacity.

3. General Obligations

As a CEF Member it is important that you recognise from the outset that you are required to play a role in your community. This means not simply offering your own views and opinions on local issues, or taking decisions that are based on your own self-interest.

The role of CEF Member is one that requires you to represent the views of your community, or your section of the community. In practice, this will involve discussing issues with people in the community to clarify their views and assess the strength of their feelings on different topics.

At some point it may be that you will find some conflict between your own personal views and interests and those of the community that you are representing. If such a situation does arise, make sure that the views of the community take precedence.

If the views of individuals on the CEF are allowed to take priority then the community will very quickly lose confidence in the CEF and its work may subsequently be devalued.

In some instances, it may be necessary and appropriate to declare an interest in the matter under discussion and to withdraw from that debate and decision-making. This will be the case where a reasonable member of the public, in full knowledge of relevant facts would be likely to conclude that your private interests are such that you cannot act in the public interest.

This Code of Conduct is based upon the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

In undertaking your duties as a member of the CEF

1. You must not behave in a way that a reasonable person would regard as disrespectful to them.
2. You must not bully or intimidate or attempt to bully or intimidate any person.
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not bring the Council, or your office as a CEF Member, into disrepute.
5. You must not do anything which may cause the Council to breach any equality enactment
6. You must not use or attempt to use your position as a CEF Member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
7. You must always use the resources of the Council in accordance with the Council's reasonable requirements and never use those resources for political purposes.
8. If, because of your membership of the CEF, you are in receipt of or are offered any gift or hospitality with an estimated value of £50 or more you must decline to accept any such gift or hospitality which could reasonably be perceived as creating an obligation upon the Council, or upon yourself as a member of the CEF.
9. You must not knowingly prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
10. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - You have the consent of a person authorised to give it; or
 - You are required by law to do so; or
 - The disclosure is made to a third party for the purpose of obtaining professional advice, provided that the third party agrees not to disclose the information to any other person; or

- The disclosure is reasonable, in the public interest, made in good faith, and made in compliance with the reasonable requirements of the Council.

4. Respect and Courtesy

For the effective conduct of the CEF's business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members of the CEF and officers of the council and partner organisations. This too plays a very important part in the CEF's reputation and how it is seen in public. It is very important that both Members of the CEF and officers remember their respective obligations and to do what they can to avoid criticism of other Members of the CEF, or other officers, in public places.

5. Discrimination

No CEF member will discriminate on any ground against any other member of the group or the public, in line with the Equalities Act 2010. Discriminatory language will not be used in discussions. All those who attend meetings have the right to be treated with dignity and respect, regardless of their race, colour, ethnic or national origins, nationality, gender, marital status, age, sexuality, religion or any other matter

6. Role of the Chair

In Partnership Board meetings the role of the Chair is a *formal* one, all speakers will be expected to address their comments to the Chair. This helps the Chair to keep control of the discussion.

In Community Sessions, where proceedings need not be so formal, the Chair may be content simply to steer the general direction of the discussion – this may be described as an *enabling* role.

The Chair is expected to know the rules by which the CEF functions, and ensure that at all stages of its work the CEF is operating in accordance with any procedures that are set down. In this context the Chair may be called upon to act as an arbiter when there is a disagreement about how the rules should be interpreted.

7. Breach of Code of Conduct

During the meeting if any member breaches the Code of Conduct they will be warned by the Chair, if this behaviour continues they will then be asked to leave the meeting.

If the member continues to breach the Code of Conduct or the behaviour is deemed serious enough then they may be asked not to attend the meetings until such time that they agree to abide by the code.

5. Conclusion

It is hoped that, by following good practice and securing sensible and practical working relationships between Members of the CEF and others, we can provide one of the cornerstones of a successful public Community Engagement Forum.

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Practice elsewhere

The Welsh Research and Recommendations

In 2012 an Independent Advisory Group's report in support of planning reform in Wales was published. Amongst its many findings the report recognised the critical role of planning committees in the planning system and recommended that research was required into how these committees could be made as efficient and effective as possible.

Welsh Government Ministers therefore invited the Royal Town Planning Institute in Wales (RTPI Cymru) to draw together a group of experts to oversee a study into the operation of planning committees. The subsequent report and recommendations were informed by a survey of all Welsh planning committees, interviews with key stakeholders, a literature review, visits to seven case study authorities and a discussion seminar.

In relation to site visits it was noted that many authorities do not allow the public on site visits, but the applicant or agent usually attends as do objectors who have submitted written objections. In one case a site notice is erected to inform and effectively invite the general public to the site visit though the attendance of the general public on site visits appears to contradict the stated intent of it being a fact finding exercise. Other authorities undertake site visits in private and have only committee members and officers attend.

The purpose of the site visit was expressed, in all cases studied, as a fact finding exercise during which no debate about the merits of the case is to take place.

Most authorities operate similar arrangements on site with an officer introduction, public (e.g. objectors) speaking only through the ward member, fact finding questions being asked of the officer or applicant through the Chair, and no discussion / debate on the merits of the application. This recognises that the proper place for debate of the proposed scheme is at the committee meeting where the decision will be made.

The report recommended that a procedure for site visits should be included within a National Planning Committee Protocol to include how such visits will be conducted and who can attend. It should state that visits:

- be held on an exceptional basis for major applications.
- Where required they should be identified by officers in consultation with the Chair, and based on clear published criteria.

- There should be provision for members to ask for a committee site visit but this should be done early, in advance of the committee meeting at which the application is being discussed. These should only be allowed where the benefit is expected to be substantial;
- take place prior to the first committee meeting at which the application is to be determined;
- not allow public speaking;
- occur no more than a week prior to the committee meeting at which the application is being discussed;
- The full committee need not attend site visits, and all members attending the committee meeting at which the application is reported should be able to vote whether or not they attended the site visit.

Practice in neighbouring areas

Locally the provisions of Codes in neighbouring authorities vary depending upon local preference and whether the Codes were adopted before or after the 2013 update to 'Probity in Planning' though all draw heavily on that Guidance.

In **East Riding** the Code states that it is important that Committee site visits are well regulated so that Councillors have the maximum opportunity for gathering information that they require and so that there can be no substantiated claims of undue influence on councillors by applicants or third parties.

On any site visit committee members are invited to ask any questions or to point out any relevant facts. Questions will normally be answered by Council officers through the Chairman, but, if appropriate, the applicant, agent or any third parties present may be invited by the Chairman to provide factual information to assist Councillors' understanding of the situation.

At **North Yorkshire County Council** the Code provides that site visits will be conducted in a formal manner: It goes on to say that to avoid giving an impression of being lobbied, Members should not listen or talk to any individuals whilst on site, unless being addressed as a group in accordance with arrangements agreed beforehand. Any comments should be made to the whole Committee through the Chair. No discussion or decision-making will take place on site, to ensure that decisions are clearly reached and understood – and are seen to be so.

In **Ryedale** the Code states that site visit meetings will be conducted in a formal manner: The Chairman should start by explaining the purpose and conduct of the site inspection adding that any questions or comments from any individual should be made to all the Members through the Chairman. The applicant and representative of

the Parish/Town Council may attend the site inspection and will be invited to draw Members' attention to any salient features or to any relevant factual information. No discussion or decision-making will take place on site.

In **Harrogate** the code states that at the site visit, the merits of the application should not be discussed. The purpose of any discussion is to direct Members to the matters they have come to view. Neither the applicant, nor objectors, supporters, the parish council or any other member of the public will be permitted to address members, either individually or as a group. It is a function principally of the Chair of the committee but also of any officer present and the members themselves to make this clear at the visit or beforehand if a member of the public enquires. There are other arrangements (the Opportunity to Speak Scheme), which allow representations to be made in person at the meeting when the application is under consideration.

The **Richmondshire** Code states that Site Visits are not formal meetings of the Planning Committee. Public rights of attendance do not apply, although members of the public are permitted to attend with the permission of the landowner.

The Council will invite the following to the site visit:

- all Members of the Planning Committee
- Ward Members if not members of Planning Committee
- the applicant/agent
- those who have made written comment
- key consultees
- the Parish Council

The letter of invitation will advise those who wish to speak that they will have three minutes to address Members of the Planning Committee. In exceptional circumstances the time limit may be extended at the Chairman's discretion. The site visit will start with the Chairman reading a prepared statement on the purposes & procedures of the site visit and giving guidance on health and safety matters.

The Chairman will remind those present of the reasons for the site visit and the need to concentrate on relevant issues and that notes will be made of proceedings. The merits of the proposal should not be discussed.

Members of the Council will have the opportunity to ask questions of any speaker. Members should confine their questions to points of clarification and should refrain from any declaration or indication of their views, in support of or opposition to the application, unless they intend to take no part in subsequent Planning Committee meetings.

In **York** the Code provides that the purpose of a Committee site visit is to enable Members to see and familiarise themselves with an application site and/or the context of any objections, prior to making a decision as to whether or not to grant

planning permission for development on that site, or on whether or not enforcement action might be required.

When a Committee site visit is to take place, the applicant or agent, any objectors and, if relevant, the Parish Council or any Ward Planning Forum, will be notified of the proposed date and time and invited to attend.

At the site there will be an opportunity for objectors to point out their concerns, and for the applicant and objectors to comment.

Members have the opportunity to question the applicant, agent and objectors at the site visit, but questions should be restricted to obtaining or confirming factual information, rather than offering opinions at this stage; this is more properly a matter for debate at the Committee meeting itself.

In **Hambleton** the Code provides that the site visit is not an opportunity for the applicant or others to address the Committee or make representations which would not have been permitted at a meeting of Planning Committee, nor is it appropriate for Members to discuss the merits of the application.

The applicant and others present (including Ward Members) will not be allowed to speak, unless he or she is specifically asked by an Officer or the Chairman to point out particular factual matters on site, or is invited to draw the Members' attention to particular

CODE OF PRACTICE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

This Code of Practice supplements the Council's Code of Conduct for Councillors and where appropriate Councillors should refer to the Code of Conduct which is set out in the Council's Constitution. The Council's Monitoring Officer's advice may be sought on the interpretation of the Code of Conduct or this Code.

1. INTRODUCTION

- 1.1 Planning affects land and property interests, including the financial value of land and the quality of their settings. It is not an exact science. It is often highly contentious because decisions affect the daily lives of everyone and the private interests of Councillors of the public, landowners and developers. Opposing views are often strongly held by those involved. A key role of the planning process is balancing the needs and interests of individuals and the community.
- 1.2 The planning system can only function effectively if there is trust among those involved. There must be trust between Councillors and Officers and between the public and the Council. The Third report of the Committee on Standards in Public Life (the Nolan Committee) (1997) recommended that each local authority's practices and procedures were set out in a local code of planning conduct to avoid allegations of malpractice in the operation of the planning system.
- 1.3 The general principles that underlie the Council's Code of Conduct for Councillors and apply to this Code of Practice are:
 - 1.3.1 Councillors should serve the public interest and should never improperly confer an advantage or disadvantage on any person.
 - 1.3.2 Councillors should not place themselves in situations where their honesty or integrity may be questioned.
 - 1.3.3 Councillors should make decisions on merit.
 - 1.3.4 Councillors should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.
 - 1.3.5 Councillors may take account of the views of others but should reach their own conclusions on the issues before them and act in accordance with those conclusions.
 - 1.3.6 Councillors should respect the impartiality and integrity of Officers.
- 1.4 The Council is committed to open, fair and transparent decision-making. Planning decisions should be made impartially, with sound judgement and for justifiable reasons.
- 1.5 This Code of Practice sets out practices and procedures that Councillors and Officers of the Council shall follow when involved in planning matters. Planning matters include the consideration of planning applications, the preparation of development plans and other planning policy and the enforcement of planning control.
- 1.6 Failure to follow this Code without good reason could be taken into account in investigations into possible maladministration against the Council, or have implications for the position of individual elected Councillors and officers. Breaches of this Code may

also amount to breaches of the Council's Code of Conduct for Councillors. If in doubt about what course of action to take, a Councillor or officer should seek the advice of the Council's Monitoring Officer.

- 1.7 This Code of Practice sets out principles to guide Councillors and officers in determining planning applications and making other decisions within the terms of reference of Planning Committee. Although of particular relevance to members of Planning Committee it applies to all members of the Council who may become involved in planning and development matters.

2. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and Officers have different, but complementary roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole.
- 2.2 The role of a member of the Planning Committee is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 2.3 Whilst Councillors have a special duty to their ward constituents, including those who did not vote for them, their overriding duty is to the whole community. This is particularly pertinent to Councillors involved in making a planning decision. A key role of the planning system is the consideration of development proposals against the wider public interest.
- 2.4 Councillors' decisions shall not discriminate in favour of any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take. Councillors must, therefore, consider all of the material issues in the light of Development Plan policies, Government advice and their own individual judgement and make a decision in the interests of the area as a whole.
- 2.5 Whilst Councillors should take account of all views expressed, they shall not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.6 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of that code may be subject to disciplinary action by the Institute.
- 2.7 Officers in their role of advising Councillors shall provide:
 - 2.7.1 Impartial and professional advice;
 - 2.7.2 Complete written reports covering all necessary information for a decision to be made.
- 2.8 The Council endorses the statement in the RTPI code that, 'RTPI members shall not make or subscribe to any statements or reports which are contrary to their own professional opinions', and extends it to apply to all officers in the authority advising on planning matters.
- 2.9 That the Council may not always follow the advice of their professional planning officers is perfectly proper. The professional officer too, may have a change of opinion, but this must be on the basis of professional judgement, and not because an authority, its Councillors or other Officers, have prevailed upon the Officer to put forward his or her professional view as something other than it really is.

- 2.10 If the Planning Committee is minded to refuse or grant an application contrary to Officer recommendation, it should consider whether to defer the application to the next available committee, before making the final decision. This will allow Councillors to obtain further legal advice on the proposed reasons for acting contrary to the recommendation based on material planning considerations. If such a decision is made it must be clearly minuted, expressed clearly and be based upon sound planning reasons supported by evidence.
- 2.11 Officers shall follow the guidance on their standards of conduct as set out in the Code of Conduct for Employees in the Council's Constitution and any National Code of Conduct for Local Government Officers issued by the Secretary of State under Section 82 Local Government Act 2000.
- 2.12 Councillors shall follow the advice in the Councillor's Code of Conduct about accepting gifts and hospitality. Councillors should treat with extreme caution any offer which is made to them personally; the normal presumption should be that such offers must be courteously declined. Similarly, officers shall politely decline offers of hospitality from people with an interest in a planning proposal. If receipt of hospitality is unavoidable, Officers shall ensure it is of a minimal level and declare it in the hospitality register as soon as possible.

3. **COUNCILLORS INTERESTS AND ALLEGATION OF BIAS**

- 3.1 Where Councillors have interests which may be thought likely to influence their decision, the fact should be declared at the meeting.
- 3.2 Where the interest is such that members of the public may feel that the Councillor will not be able to approach matters with an open mind and consider the application on its planning merits, Councillors should consider withdrawing from the Committee.
- 3.3 These principles apply equally to Councillors who are not members of Planning Committee Councillors who have such interests should consider whether it is appropriate for them to participate in the planning process, and in any event, should declare such interest at any meeting which they may attend or in any letter which they may write.
- 3.4 The Code of Conduct for Councillors provides guidance as to disclosable interests which may (depending on their nature) affect a Councillor's ability to take part in the decision-making process. However, Councillors may have other interests which may influence their decision which will not amount to disclosable interests for the purposes of the Code. In order to maintain the integrity of the planning system, Councillors should be careful to ensure that such interests do not unduly influence their decisions or give rise to a perception of bias in decision making. Examples of such interests are:-
- 3.4.1 from being closely aligned with ward campaigns or issues;
 - 3.4.2 from membership of other Committees of the Council;
 - 3.4.3 from membership of other public or community bodies;
 - 3.4.4 from membership of voluntary associations and trusts (including where appointed by the Council);
 - 3.4.5 from a connection with a particular policy initiative of the Council;
 - 3.4.6 from membership of clubs, societies and groups; and

3.4.7 from hobbies and other leisure interests.

Such interests may mean that a Councillor is involved with a planning application before the matter comes before the Planning Committee. Such involvement need not on its own debar a Councillor from participating in making the planning decision when the matter is considered by Planning Committee providing that the Councillor has not already decided how they will vote on the matter before the Committee. Councillors should, however, always consider carefully whether in any particular case they could reasonably be seen to approach the planning merits of the application with an open mind. If the Councillor considers that this is not possible, the Councillor should withdraw from consideration of that item.

3.5 As a minimum, the integrity of the planning system requires openness on the part of Councillors; it must operate fairly and be seen to operate fairly.

4. **DEVELOPMENT PROPOSED BY THE COUNCIL OR A COUNCIL OWNED COMPANY**

4.1 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.

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

4.3 Members of the Planning Committee who sit on the board of a Council owned company which has submitted a planning proposal shall declare an interest and take no part in the discussion and determination of that proposal, except where they are the local Councillor when they may speak on matters of local concern but shall not vote.

4.4 Officers who are involved in the preparation of development proposals shall not advise on, or take any part in the consideration of, planning applications in respect of such proposals.

5. **STATUTORY DUTIES**

The Council is also subject to a number of statutory duties which it must comply with when carrying out its statutory functions. These will apply to the planning function except when such matters are clearly immaterial because they are not capable of relating to the use of development land. Examples of these duties include:

5.1 **Equality Act 2010**

Section 149 provides that:

5.1.1 A council must, in the exercise of its functions, have due regard to the need to:-

- (a) eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a protected characteristic and persons who do not share it.

5.1.2 The above powers relate to the following protected characteristics:-

- (a) Ages;
- (b) Disability;
- (c) Gender reassignment;
- (d) Marriage and civil partnership;
- (e) Pregnancy and maternity;
- (f) Race (including colour, nationality and ethnic or national origins);
- (g) Religion or belief;
- (h) Sex; or
- (i) Sexual orientation.

5.2 **Human Rights**

Section 6(1) of the Human Rights Act 1998 provides that:

“It is unlawful for a public authority to act [or fail to act] in a way which is incompatible with a Convention right.”

5.3 **Best Value**

Section 3(1) of the Local Government Act 1999 provides that:

“A best value authority must make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”

5.4 **Crime and Disorder**

Section 17(1) of the Crime and Disorder Act 1998 provides that:

“Without prejudice to any other obligation imposed on it, it shall be the duty of a [local authority] to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.”

6. **LOBBYING OF AND BY COUNCILLORS**

- 6.1 Lobbying is a normal and proper part of the political process. The applicant, supporters or those who may be affected by a proposal will often seek to influence the decision by an approach to their local Councillor or members of the Planning Committee. However, reacting to lobbying can lead to the impartiality of a Councillor being called into question and require that Councillor to declare an interest.
- 6.2 The information provided by lobbyists is likely to represent an incomplete picture of the relevant considerations in respect of a planning matter. The views of consultees, neighbours and the assessment of the case by the planning officer all need to be

considered before a Councillor is in a position to make a balanced judgement on the merits of the case. Councillors should provide officers with copies of any lobbying material they may have received, whether in favour or against a proposal.

- 6.3 The time for individual members of the Planning Committee to make a decision on a proposal is at the committee meeting when all available information is to hand and has been duly considered.
- 6.4 A Planning Committee member shall be free to listen to a point of view about a planning proposal and to provide procedural advice (in particular referring the person to officers). Even though they may agree with a particular view, Planning Committee Councillors should take care about expressing an opinion indicating they have made up their mind before the decision-making meeting. To do so, without all the relevant information and views, would be unfair and prejudicial. A decision is at risk of being challenged if Councillors do not retain open minds and are not genuinely susceptible to persuasion at the decision-making meeting. Councillors who are lobbied should:
 - 6.4.1 make clear that they reserve their final decision on a proposal until the committee meeting;
 - 6.4.2 only give procedural advice;
 - 6.4.3 consider referring those lobbying to the relevant Officer who can provide further advice; and
 - 6.4.4 not seek to meet an applicant or potential applicant alone.
- 6.5 Members of the Planning Committee shall not, in general, organise support or opposition for a proposal, or lobby other Councillors (other than when addressing the Planning Committee). Councillors shall not put improper pressure on officers for a particular recommendation.
- 6.6 The local Councillor who is not a member of the Planning Committee will be allowed to attend and speak at the decision-making meeting (representing the views of their ward) but not vote. The Councillor for an adjacent ward substantially affected by the proposal shall, at the discretion of the chair of the Planning Committee, also be allowed to attend and speak but not vote. A local Councillor who has an interest in an application, within the meaning of the Code of Conduct should seek prior advice from the Monitoring Officer about his or her position.
- 6.7 If a member of the Planning Committee identifies himself or herself with group or individual campaigning for or against an application, he or she shall declare an interest and not vote or decide on the matter. However, that Councillor shall be given the opportunity to address the Committee and must leave the meeting as soon as they have spoken and not return until a decision has been made by Committee.
- 6.8 Councillors of a Planning Committee must be free to vote as they consider appropriate on planning matters. A Councillor cannot be instructed how to exercise their vote on a planning matter.
- 6.9 Councillors should inform the Monitoring Officer where they feel they have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality).

7. PRE- AND POST- APPLICATION DISCUSSIONS AND NEGOTIATIONS

- 7.1 Discussions between an applicant and a planning authority, prior to the submission of an application can be of considerable benefit to both parties and is encouraged. Continued discussions and negotiations between these parties, after the submission of proposals, is a common and important facet of the planning process. However, they should take place within clear guidelines, as follows.
- 7.2 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are those of the Officer only, and are provisional.
- 7.3 Advice should be consistent and based upon the Development Plan and material considerations. There should be no significant difference of interpretation of planning policies by individual planning officers.
- 7.4 A written note should be made of all potentially contentious meetings. Two or more officers should attend potentially contentious meetings. A note should also be taken of potentially contentious telephone discussions.
- 7.5 Councillors need to preserve their role as impartial decision makers and members of Planning Committee should not take part in pre- or post- submission discussions and negotiations with applicants regarding development proposals. Should there be occasions when other Councillors are involved, it should be part of a structured arrangement with Officers. Councillors must avoid indicating the likely decision on an application or otherwise committing the authority during contact with applicants.
- 7.6 Councillors may receive information from applicants and give information to applicants and members of the public but, to safeguard their impartiality, they should maintain a clear distinction between receiving information and negotiating. Any information received by Councillors should be provided to the officers dealing with the application. Councillors who are approached for planning, procedural or technical advice should refer the applicant to the relevant officer.

8. OFFICER REPORTS TO COMMITTEE

- 8.1 The Lead Officer - Planning will submit written reports to the appropriate Planning Committee on planning applications to be determined by the Council. The reports will give the background to the application including any relevant planning history of the site, a description of the proposals and their likely effects, and the relevant Development Plan and Government policy considerations, together with any other material considerations. Where a planning application requires an environmental impact assessment the Lead Officer - Planning shall include in his/her report a summary of the environmental statement, comments by bodies consulted and representations from members of the public together with his/her own comments. The reports will include a summary of representations made about the application. The Lead Officer - Planning in his/her report will give a reasoned assessment of the proposals and a justified recommendation.
- 8.2 Oral reports (except to present and update a report) should be extremely rare and fully minuted when they do occur.
- 8.3 The Lead Officer - Planning will have available for inspection by Councillors the full planning application, environmental statement (where required) and representations from bodies consulted and members of the public.

9. **PLANNING CONSIDERATIONS**

- 9.1 Planning decisions should be made on material planning considerations and should not be based on immaterial considerations.
- 9.2 Members of Planning Committee should attend training sessions which may be organised from time to time. All other Councillors are encouraged to attend.
- 9.3 Planning legislation, as expanded by Government Guidance and decided cases, defines which matters are material considerations for the determination of planning decisions. There is much case law on what are material planning considerations. The consideration must relate to the use and development of land.
- 9.4 Briefly, at the date of the preparation of this Protocol, material planning considerations include:-
 - 9.4.1 the Development Plan;
 - 9.4.2 Government Guidance;
 - 9.4.3 Supplementary Planning Documents adopted by the Council;
 - 9.4.4 non-statutory planning policies adopted by the Council;
 - 9.4.5 the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas;
 - 9.4.6 the statutory duty to pay special attention to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses;
 - 9.4.7 representations made by statutory consultees and other persons making representations in response to the publicity given to applications, to the extent that they relate to planning matters;
 - 9.4.8 planning obligations (given unilaterally or by way of agreement) under section 106 of the Town and Country Planning Act 1990.
- 9.5 it should, however, be noted that the risk of costs being awarded against the Council on appeal is not itself a material planning consideration.
- 9.6 It is the responsibility of officers in preparing reports and recommendations to Councillors to identify the material planning considerations and warn Councillors about those matters which are immaterial planning decisions.
- 9.7 Personal considerations and purely financial considerations are not on their own material; they can only be material in exceptional situations and only in so far as they relate to the use and development of land – such as, the need to raise income to preserve a listed building which cannot otherwise be achieved.
- 9.8 The planning system does not exist to protect private interests of one person against the activities of another or the commercial interests of one business against the activities of another. The basic question is not whether owners and occupiers of neighbouring properties or trade competitors would experience financial or other loss from a particular

development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest.

- 9.9 Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated.
- 9.10 It will be inevitable that all the considerations will not point solely to either grant or refusal. Having identified all the material planning considerations and put to one side all the immaterial considerations, Councillors must come to a carefully balanced decision which can be substantiated, if challenged on appeal.

10. THE DECISION MAKING PROCESS

- 10.1 Councillors shall recognise that the law requires that where the Development Plan is relevant, decisions should be taken in accordance with it, unless material considerations indicate otherwise.
- 10.2 Where an environmental impact assessment is required, the Planning Committee shall take the information provided in the report into consideration when determining the application.
- 10.3 If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations which justify this must be clearly stated.
- 10.4 Where the Planning Committee decide to adopt the recommendation of the Lead Officer - Planning, the reasons contained in his/her report will be minuted, together with any additional reasons determined by the Committee.
- 10.5 Where the Planning Committee is minded to approve or to refuse a planning application, contrary to the recommendation of the Lead Officer - Planning, or the Development Plan, if agreement can be reached at the meeting rather than deferring the item, the planning reasons for that decision shall be fully minuted.
- 10.6 The reasons for Committee's decision to defer any proposal should also be recorded.

11. SITE VISITS BY THE COMMITTEE

- 11.1 A site visit may be held if the Lead Officer - Planning in consultation with Chair of the relevant committee considers it will assist Councillors in reaching their decision or where a site visit has been requested or an application deferred for such a visit. Site visits should only be undertaken where there is a reason to do so. This would be, for example, where the impact of the proposed development is difficult to visualise from plans and supporting material.
- 11.2 When a site visit is held prior to the meeting of the Planning Committee it is desirable that all Councillors attending the Planning Committee should also attend the site visit. Councillors voting on a planning application without having attended the visit to the particular site may give the impression that they have not taken the opportunity to be fully informed about the application. Information gained from the site visit should be reported back to committee so that all Councillors have the same information.
- 11.3 Site visits should be conducted in a formal manner in compliance with the Human Rights Act 1998 and any subsequent legislative criteria.

- 11.4 The organisation of the site visit will fall to the planning officer, who will inform Democratic Services of the need to send out site visit invites to the following:
- All Members of the Planning Committee including nominated substitutes
 - Relevant Ward Members
 - Relevant Parish Councillors
- 11.5 The Applicant/Agent will be informed that a site visit will take place in order to ensure that site access can be arranged. This is arranged by the planning officer due to their ongoing contact with relevant applicants/agents.
- 11.6 Objectors/supporters of the applicant will be invited to attend the site visit at the discretion of the Chair of the Planning Committee.
- 11.7 No opportunity for speaking, debate or giving opinions will be afforded to the Agent/Applicant or other parties e.g. Parish Councillors, Ward Councillors, neighbours or objectors who attend the site. The only exception to this is if the Chair of the Planning Committee permits a response to questions of fact asked by the members of the Committee.
- 11.8 The site visit will be attended by the relevant planning officer(s) who will answer any questions raised. The planning officer(s) will describe the development and point out the relevant issue(s) that the Committee has come to view.
- 11.9 On assembling at the site, at the time specified, the Chair will explain the purpose and procedures of the site visit so that all are aware that it is a fact finding exercise only and that no decision will be taken until the committee meeting. The planning officer will explain the application as it relates to the site and relevant viewpoints. Following any questions to the planning officer, or clarification sought on matters which are relevant to the site inspection, the Chair will bring the site visit to a close.
- 11.10 Members of the Committee should address any request for clarification through the Chair of the Planning Committee. Questions should not be directed to the applicant/agent, parish councillors, local Ward Councillors or other third parties present. Should the Chair deem it appropriate, those present may be requested to respond to questions of fact only.
- 11.11 Councillors should not engage in open discussion either individually or in groups with the applicant or any other people present. Any request for Councillors to express a view or accept an offer of hospitality should be politely declined.
- 11.12 Unofficial site visits are not encouraged as they do not have the appropriate procedural safeguards. Any Councillor attending an unofficial site visits must ensure that they avoid giving the impression that he/she represents the views of the Planning Committee or the Council. If a Councillor feels compelled to give a personal view, he/she should emphasise that the final decision is one for the Planning Committee.

12. PUBLIC SPEAKING AT PLANNING COMMITTEE

- 12.1 Wherever possible, objections or representations to planning applications should be made in writing. Written representations received will be made available for public inspection and objections summarised and reported to the Planning Committee

Councillors have the opportunity to inspect all letters received before the decision on the application is made.

12.2 The council operates a scheme of public speaking at planning committee meetings. Normally the following people can speak at Planning Committee in relation to any specific application.

- One speaker representing the applicant – usually the applicant themselves or their agent.
- One speaker representing the objectors.
- The relevant Parish Council representative.
- A Ward Member.

In exceptional circumstances the Chair has discretion to allow any other person to speak if it is considered necessary to do so.

Order of Speakers

1. The objector has five minutes to put their case.
2. A representative of the relevant parish council then has five minutes to put their case.
3. A ward member who wishes to speak on the application will be allocated five minutes to put their case
4. At the appropriate time, any other person allowed to speak at the discretion of the Chairman will be allowed five minutes to put their case.
5. Finally the applicant, or their representative, will be allowed five minutes to put their case.

12.3 The speaker representing the applicant must have the permission of the applicant to represent him/her.

12.4 The speaker representing the objector(s) can be a neighbour, an interested individual or a representative of a residents group.

12.5 The first objector to register to speak will normally be appointed as the spokesperson. Where there is more than one person wishing to speak, objectors are encouraged to agree on a spokesperson who is prepared to cover all the points of concern, so as to make best use of the time available.

12.6 Persons wishing to speak on an application, which is to be considered at a Planning Committee and who have previously made representations on the application should contact the Public Speaking Officer on 01757 292037 before 3.00pm on the Monday prior to the Committee meeting.

No late notification will be accepted and speakers cannot “turn up” to speak at Committee without the due notice being given.

12.7 The purpose of the scheme is to enable speakers to put forward any points they wish to make directly to the Committee. There will be no need to read any submission already

made in writing, as this will already be summarised in the report Councillors have before them.

- 12.8 Speakers should confine their comments to matters relevant to planning applications.
- 12.9 People wishing to speak at Planning Committee cannot hand out documentation to members of the Committee. Photographs may be handed out provided that a minimum of 20 copies have been delivered to the Council by 12.00 noon on the last working day prior to the meeting.
- 12.10 The Chair of the Committee retains the right to decline to hear someone if they behave improperly, offensively or if they, in the Chair's view, intentionally obstruct the business in hand.
- 12.11 Officers may comment on the representations and the merits of the application in the light of those representations
- 12.12 The Committee will proceed to debate the application and make a decision.

13 REVIEW OF DECISIONS

- 13.1 The Audit Commission's Report, 'Building in Quality', recommended that elected Councillors should visit a sample of implemented planning permissions to assess the quality of decisions. This can improve the quality and consistency of decision-making and help with reviews of planning policy.
- 13.2 Visits to application sites previously considered by the Council shall be organised in tandem with visits to current application sites, as appropriate. Briefing notes shall be prepared in each case.
- 13.3 Attendance at the review site visits shall be restricted to members of the committee and the local Councillor(s).

14. TRAINING

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