

**REPORT OF THE MONITORING OFFICER**

---

**REVIEW OF CONSTITUTIONAL ARRANGEMENTS –  
PLANNING COMMITTEE MEETINGS AND PROCEDURE RULES**

**AGENDA ITEM:3**

---

**Reason for this Report**

1. To consider proposed changes to the role of, and arrangements for, meetings of Planning Committee and to consider potential changes to the existing Constitution to incorporate new Procedure Rules for Planning Committee meetings.

**Background**

2. In October 2006, the Council received a report concerning the Wales Audit Office baseline assessment of the Planning Service. As a result of this report, the Planning Service has revised its processes and procedures as a result of the Wales Audit Office report. The Council's Standards and Ethics Committee has also considered the report and has played an influential role in securing a permanent venue for the Planning Committee in the Ferrier Hall at City Hall.
3. On 6 July 2007, this Committee considered a draft Members Planning Code of Good Practice, which was endorsed for further consultation with the Planning Committee. A copy of the latest version is attached as **Appendix A** to this report. This Committee has also previously considered a draft protocol for Members and officers involved in the planning process which arose from the Wales Audit Office's baseline assessment of the planning service. However, there has been a subsequent delay in finalising this protocol due to the introduction of a new Member Code of Conduct, which was adopted by the Council on 15 May 2008.
4. At its meeting on 17 October 2008, this Committee agreed to undertake a review of the constitutional procedures and arrangements for the Council's Planning Committee. As part of this review, it was agreed that all Members should be consulted on potential changes to the role of, and arrangements for, meetings of Planning Committee. To that end, the Committee agreed that a questionnaire be circulated to all Members, with an invitation to complete and return their questionnaires for consideration by this Committee at a future meeting.

**Issues**

5. The previous meeting of this Committee on 27 July 2009 considered a number of options which had been developed as a result of the views received from Members in the questionnaire survey. The Committee's responses to the various proposals put forward following the consultation exercise are outlined in **Appendix B** to this report. These issues have been further discussed by Groups following the Committee's last meeting.
6. The Committee also considered potential changes to the existing Constitution that it would wish to recommend to Council. It was agreed that the Monitoring Officer would prepare a further report for consideration by the Committee at its next meeting on the introduction of proposed new Planning Committee Procedure Rules. This would seek to reflect a number of the options agreed by the Committee on 27 July 2009. A copy of the draft Planning Committee Procedure Rules is attached as **Appendix C** to this report.

### **Finance Implications**

7. There are none arising directly out of this report.

### **Legal Implications**

8. Any changes or alterations made to our existing arrangements must be fully compliant with the Local Government Act 2000 and the Local Authority's Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001. However, within these regulations and associated guidance there is scope for flexibility to ensure that the Constitution meets the needs of the organisation.

### **Recommendations**

9. The Committee is asked to:
  - i) Approve the draft Members' Planning Code of Good Practice as set out in Appendix A to this report for recommendation to Council;
  - ii) Approve the proposed changes to Planning Committee meeting arrangements as set out in Appendix B to this report;
  - iii) Approve the draft Planning Committee Procedure Rules as set out in Appendix C to this report for recommendation to Council.

**KATE BERRY**  
**Monitoring Officer**  
**7 September 2009**

**Appendix A:** Draft Planning Members Code of Good Practice

**Appendix B:** Constitution Committee recommendations arising from meeting on 27 July 2009

**Appendix C:** Draft Planning Committee Procedure Rules



# **Members Planning Code of Good Practice**

## 1. Purpose of the Code

This Code has been being prepared for the guidance of Officers and Members in their dealings with planning matters. This includes decision-making meetings of Council, which exercise the planning function of the planning authority or less formal occasions such as meetings with officers or the public or consultative meetings. Whilst much of this Code of Good Practice relates to the submission and determination of planning applications it also applies to discussions / submission relating to the preparation of the Local Development Plan and to Planning Appeals and enforcement. The Code has been prepared in accordance with: -

- Code of Conduct for Members and Co opted Members of the County Council of the City and Council of Cardiff
- The Royal Town Planning Institute Code of Conduct for Chartered Planners

The Code has the following objectives:-

- **To guide and protect Officers and Members in dealing with planning related matters from criticism and challenge**
- **To inform potential developers and members of the general public of the standards adopted by Cardiff County Council and the performance of its planning function**
- **To ensure that, in the planning process, there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way**

## 2 Key Principles

Planning decisions made by Councils can have a considerable effect on the value of land, the nature of its development and on the lives and amenities of people living in the vicinity. The process of arriving at decisions on a planning matter must be open and transparent. The involvement of both Officers and Members must be clearly understood. The main principles which Members should have clear regard for are:-

- The key purpose of planning is to control development in the public interest
- Your overriding duty as a Councillor is to the whole local community
- You have a special duty to your constituents including those who do not vote for you
- Your role as a member of the planning authority is to make planning decisions openly, impartially, with sound judgement, and for justifiable reasons
- Whilst you may be strongly influenced by the views of others and of your party in particular it is your responsibility alone to decide what view to take on any question which Councillors have to decide
- You should never do anything as a Councillor, which you could not justify, to the public. Your conduct and what the public believes about your conduct will effect the reputation of the Council
- It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct
- You should treat with extreme caution any offer of gift or favour or hospitality that is made to you personally. You are personally responsible for all decisions connected to the acceptance of such gifts or hospitality and for avoiding the risk of damage to public confidence in local government
- Section 54a of the Town and Country Planning Act requires you to take planning decisions in accordance with the provisions of the development plan unless material considerations indicate otherwise. You should ensure that all decisions that you make have regard to proper planning considerations and are made impartially and in a way, which does not give rise to public suspicion or mistrust
- The Code applies to all decisions of the Council on planning related matters. This includes Members involvement in any planning application, whether or not it is reported to a committee, all applications determined by any committee or by Full Council acting as a local planning authority

### **3. Relationship to the Code of Conduct for Members and Co Opted Members of the County Council of the City and County of Cardiff**

The Code of Conduct adopted by Cardiff County Council on 13<sup>th</sup> December 2001 sets out requirements and guidance for Members on the disclosure and registration of interests. Not only should impropriety be avoided but also any appearance or ground for suspicion of improper conduct. When considering any planning matter you should have primary regard for the Code of Conduct, and particularly the requirement to properly declare all interests:-

- **Do** apply the rules in the Code of Conduct for Members first which must always be complied with
- **Do** then apply the rules in this planning Code of Best Practice

## 4 Development Proposals and the Declaration of Members' Interests

When considering planning matters Members may find that they need to:

- Declare a personal and / or prejudicial interest or
- Indicate that they have come to a view prior to the meeting (i.e. fettered their discretion)

The existence and nature of any interest should be disclosed at all relevant meetings including informal meetings or discussions with officers and other Members. A member may at any time declare a personal interest under the Members Code of Conduct however it is preferably disclose your interest at the beginning of the meeting and not just at the commencement of the discussion on that particular matter.

### Where your interest is personal and /or prejudicial:

- **Do Not** participate or give the appearance of trying to participate in the making of any decision on the matter by the planning authority
- **Do Not** try to represent Ward/local views. Get another Member who is not a member of DC to do so instead
- **Do Not** get involved in the processing of the application and direct any queries or technical matters to the relevant officer
- **Do Not** seek or accept any preferential treatment or place yourself in a position that could lead the public to see that you are receiving preferential treatment because of your position as a Councillor. This would include using your position to discuss any proposal with Officers or Members when other members of the public would not have the same opportunity to do so. You may need to identify another local member who is prepared to represent local interests
- **Do** be aware that whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal interest to an appropriate Officer in person or in writing, the Member's Code of Conduct places greater limitations on you in representing that proposal than would apply to a normal member of the public (for example where you have a personal and prejudicial interest in a proposal to be put before a meeting you will have to withdraw from the room or Chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to observe the meeting's consideration of it from the public gallery)
- **Do** notify the Monitoring Officer in writing of your own interest and ensure that a proper record of the interest is noted at any meeting (use the form at Appendix 1)

### **Where you have fettered your discretion**

The allowance made for Councillors to be predisposed to a particular view is a practical recognition of:

- the role played by party politics in Local Government
- the need for Councillors to inform constituents of at least an initial view on a matter as part of their public role
- the structure of local government which ultimately requires the same Councillors to make decisions

It is therefore particularly important for elected Councillors to have a clear understanding about the implications of expressing an opinion or view on planning matters. If you make up your mind or clearly appear to have made up your mind (particularly in relation to an external interest or lobby group) on how you will vote on any planning matter prior to formal consideration of that matter (i.e. at the meeting of the planning authority, prior to the hearing of the Officers presentation and evidence and arguments on both sides) you may be seen to have fettered your discretion. For example:-

- Where the Council is the landowner, developer or applicant and you have acted as or could be perceived as being a chief advocate for the proposal. Through your significant personal involvement in preparing or advocating the proposal you may be perceived by the public as being no longer able to act impartially or to determine the proposal purely on its planning merits
- Where you are a member of an organisation or lobbying group, which has publicly expressed a view on the planning matter. (A lobbying group is a body whose principle purposes include the influence of public opinion or policy). You may also have a personal interest in a matter before committee. The test of establishing a prejudicial interest under the Code is analogous to the common law test for bias - "that a member of the public with knowledge of all of the relevant facts would regard your interest as so significant that it is likely to prejudice your judgement of the public interest"

However where you act as part of the consultee body (e.g. where you are also a member of a community council;) you may take part in its debate provided that:-

- the proposal does not substantially effect the well-being or financial standing of the consultee body, and
- you make it clear that your views are expressed on limited information before you only, and



- that you reserve judgement and the independence to make up your own mind on each separate proposal based on your overriding duty to the whole community and not just to the people in that area, ward or parish, and
- you clearly state you will not in anyway commit yourself as to how you or others may vote when the proposal comes before the Planning Committee and
- you disclose your personal interest regarding your membership or role when the Planning Committee comes to consider the proposal

**In all other circumstances**

- **Do not** speak and vote on a proposal as a Member of the Development Control Committee where you have fettered your discretion. You do not also have to withdraw but you may prefer to do so for the sake of appearances
- **Do** explain that you do not intend to speak and vote because you have or could reasonably be perceived as having judged the matter elsewhere so that this may properly be recorded in the minutes
- **Do** take the opportunity to exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and have fettered your discretion but do not have a personal/prejudicial interest. In these circumstances advise the Chair that you wish to speak in this capacity before the commencement of the item, remove yourself from the Members seating area for the duration of that item and ensure that your actions are recorded.

The flow chart at Appendix 2 provides guidance for you in deciding whether you have a declarable interest

Given the issues set out above Members of Planning Committee may wish to consider whether they should take an active role on consultee bodies such as Community Councils.

## 5 Contact with Applicants, Developers and Objectors

Local Authorities are encouraged by Government policy to enter into pre-application discussions with potential applicants. There will also be discussions and meetings on strategic plans for the Council (e.g. matters arising from the local development plan or major development sites). Such strategic discussions lie within the remit of the Executive Member with responsibility for Environment and Transportation and may be distinguished from discussions on specific planning applications, and therefore not subject to the caveat set out below. In addition negotiations and discussions are likely to be ongoing after an individual application has been submitted. Such discussions can often be interpreted by the public (and especially objectors) as prejudicing the planning decision-making process. In order to allay such perceptions all discussions should take place within clear guidelines.

One particular aspect of application discussions relates to lobbying. Lobbying is a normal part of the political process. However, it can lead to impartiality being brought into question and accordingly there is a need to declare publicly that an approach of this nature has taken place. Lobbying can take place by professional agents as well as un-represented applicants/landowners and community action groups.

- **Do not** agree to any formal meeting with applicants, developers or groups of objectors if you are a member of Development Control Committee and therefore likely to be part of the decision-making process. There may be exceptional circumstances where meetings do take place. Such meetings must always have been formally convened by the Development Control Manager. The officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file, and that a record of the meeting will be made available for public inspection and will form a background paper to any Committee report
- **Do** refer those who approach you for planning procedural or technical advice to officers
- **Do** report to the Development Control Manager any significant contact with the applicant and other party, explaining the nature and purpose of the contacts and your involvement in them and ensure that this is recorded on the planning file
- **Do not** attend any private planning presentation unless an Officer is present and/or that it has been organised by Officers. These may be differentiated from major public presentations when members may seek information but should not enter into discussions or express a view

- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application and that this will be carried out by the appropriate Committee of the planning authority
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals
- **Do** explain to those lobbying or attempting to lobby you that whilst you can listen to what is said it prejudices your impartiality and therefore your ability to participate in the Committee's decision-making to express an intention to vote one way or another, or such a firm point of view which amounts to the same thing
- **Do** remember that your overriding duty is to the whole community not just the people in your local area, and taking account of the need to make decisions impartially, you should not improperly favour or appear to improperly favour any person, company, group or locality
- **Do not** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable ensure that it is of the minimum and its acceptance is declared as soon as possible (remembering to register any gift with a value of over £25).
- **Do** copy or pass on any lobbying correspondence you receive to the Development Control Manager at the earliest opportunity as this will enable proper officer advice to be given in the report and avoid the situation where officers are asked to respond to new information at the meeting itself, leading to deferral or decisions made on partial advice
- **Do** promptly refer to the Development Control Manager any offers made to you of planning gain or constraint of development
- **Do** inform the Monitoring Officer where you feel that you have been exposed to undue or excessive lobbying or approaches
- **Do** note that unless you have a personal and prejudicial interest you will not have fettered your discretion or breached this Planning Code of Good Practice through listening or receiving view points from residents or other interested parties making comments to residents, interested parties, other members or appropriate officers providing they do not consist of or amount to prejudging the issue. Provided that you make clear that you are keeping an open mind, seeking information through appropriate channels or being a vehicle for the expression of opinion or speaking at the meeting as a ward member provided you explain your actions at the start of the meeting or item and make it clear that having expressed the opinion or ward view you have not committed yourself to vote in accordance with those views and you will make up your own mind having heard all of the facts and listened to the debate

## 6 Ward Interests

A Development Control Committee Member who represents a ward affected by a particular application is in a difficult position particularly if it is a controversial application around which a lot of lobbying takes place. There is a balance to be struck between the duty to be an active ward representative and the overriding duty as a Councillor to the whole local community. In these circumstances

- **Do not** lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken
- **Do not** decide or discuss how to vote on any application at any sort of political group meeting or lobby any other member to do so. Political group meetings should never dictate how Members should vote on a planning issue
- **Do not** become a Member or lead or represent an organisation whose primary purpose is to lobby, to promote or oppose specific planning proposals. If you do you will have fettered your discretion and are likely to have a personal and prejudicial interest and will have to withdraw from any meeting
- **Do** of course join general interest groups which reflect your areas of interest or which concentrate on issues beyond particular planning proposals (such as your local civic society) but make sure that you disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the committee that you have reserved judgement and the independence to make up your own mind on each separate proposal

**7 Development Proposals Submitted by Officers or Councillors of the Council**  
**(the advice in this section applies to both planning applications and Development Plan Policy matters)**

Officers should never act as agents for people pursuing a planning matter with their Authority. Members may in law advocate on behalf of a proposal or act as an agent on behalf of a specific proposal. However, it is likely that you will then have a personal and a prejudicial interest which must be declared in accordance with the Members Code of Conduct and which will debar you from taking part in the decision. Where Members are likely to do this on a regular basis they should not accept membership of the Development Control Committee.

Should any Member or Officer connected with the planning service submit their own proposals to the Authority they should declare the interest to the Monitoring Officer and to the Chief Strategic Planning and Environment Officer at the earliest opportunity and take no part in the processing. Any such proposal/application will be reported to the Development Control Committee **and not** dealt with under delegated powers.

## 8 The Decision-Making Process

A decision on a planning application cannot be made before the committee meeting when all of the relevant information is to hand, any political group meeting prior to a Committee meeting should not be used to decide how Councillors should vote. Accordingly Agenda Briefing meetings and any pre-Committee meetings will solely be for the purpose of enabling an exchange of briefing material between Officers and Members on planning issues of concern in relation to particular applications, and will be open to Members of all political groups. All applications considered by Development Control Committee or by a report on the circulated schedule shall be the subject of written reports and clear recommendations. If the recommendations are contrary to the provisions of the Development Plan the material considerations, which justify this, shall be clearly stated. If in the view of the officer the matter is finally balanced the report will say so. The recommendations put forward by officers and the decisions by members are separate parts of the same process, which should be justified by the report and debate respectively.

The Conduct of the meeting will be in accordance with the Committee Procedure Rules found within the Council's Constitution

- **Do not** put pressure on officers to put forward a particular recommendation (this does not prevent you from asking questions or submitting views to the Development Control Manager which may be incorporated in to any Committee report)
- **Do** recognise that officers are part of a management structure. Only discuss the proposal outside of any arranged meeting with a Chief Officer, or those officers who are authorised by the Chief Officer to deal with the proposal at Member level
- **Do** recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance with the Councils Code of Conduct for Officers and their Professional Code of Conduct. As a result planning officers views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence which may on occasions be at odds with the views, opinions or decisions of the Committee or its Members
- **Do** have regard to the Councils Member/Officer Protocol, which governs the working relationships that you have with officers. This is a relationship based on mutual trust and courtesy, and all meetings should be guided by this principle.

- **Do** come to meetings with an open mind and demonstrate that you are open minded
- **Do** ensure that if you have requested a proposal to go before the Committee rather than be determined through officer delegation that your planning reasons are recorded and repeated in the report to the Committee
- **Do** comply with the Section 54a of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise
- **Do** come to your decision only after due consideration of all the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary defer or refuse
- **Do not** vote or take part in the meeting's discussions on a proposal unless you have been present to hear the debate including the officers introduction to the matter
- **Do** have recorded the reasons for the Committees decision to defer any proposals
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge
- **Do not** allow members of the public to communicate with you during the committee's proceedings (or in writing) other than through the scheme for public speaking as this may give the appearance of bias
- **Do** ensure that you comply with the Councils procedures in respect of public speaking

## **9 Training**

Training on planning matters will be made available at convenient times for all Members of the Council, and in particular those serving on the Planning Committee.

Subject to resource availability places will be made available for new Members of the Planning Committee to attend the Annual Planning Summer School (run by the Royal Town Planning Institute "RTPI")

Refresher training for all Members of Planning Committee will be held throughout the year in the form of Briefing Sessions at Planning Policy Committee Meetings.

- **Do** ask the Chair of or the Committee Clerk for the Planning Committee if you have not attended Planning Summer School and you would like to
- **Do** endeavour to attend any training sessions provided since these will be designed to extend your knowledge and thus assist you in carrying out your role properly and effectively



## 10 Site Visits

Site visits by Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to that decision.

The purpose of a site visit is to enable Committee Members:-

- to view the site of a planning application together with surrounding land;
- to place the application in its physical context;
- to assist the appraisal of constraints and opportunities afforded by the proposed development, and its potential impact on surrounding land;
- to have officers point out material considerations

A consistency of approach is required for site visits to ensure that any site visit undertaken adds to the Planning Process, and also that the interests of the applicant, any objectors and the local community are dealt with equitably

Members are asked to alert officers to impending requests for site visits at the earliest opportunity. This will then allow them to inform the Chairman and consider jointly whether site visits could be arranged in a way which minimises any delay to the processing of the application

When a member makes a request for a site visit the reason for the request must be stated and will be minuted. The decision on whether to agree a site visit lies with the Committee.

Site visits should only be made where necessary. Consideration should be given to what will the Planning Committee gain from a site visit that is not already evident from the Officer's Report and other supporting information.

Committee members should consider requests critically because they generally cause delay to the process, and are time consuming and costly. Alternative methods of obtaining the information should be considered i.e. digital photography.

When considering a request for a site visit which could lead to the deferment of the determination of the application, the Chairman will require the proposer and seconder of the motion to state the reason for the proposed visit and what the Committee will gain and this shall be recorded in the Minutes.

Whenever a site visit has been agreed by the Committee, it should specify whether the site should be viewed

- from the public highway or public land only
- from the application site
- from other private land outside the application site

This should be recorded in the Minutes. This will enable officers to make appropriate requests to enter onto private land.

The Head of Development Control (or their representative) will make arrangements for site visits. This will include

- obtaining the relevant permission to enter private land
- informing Local Members, Petitioners, and anyone who has made observations / representations / comments on the application
- sending a copy of the Site Inspection Protocol to the applicant or owner who has given consent for the site to be entered, the owner of any other land who has agreed that their land may be entered
- arranging for an attendance list to be taken of the visit

On attending a site visit Members should follow the Site Inspections Protocol (attached at Appendix )

- **Do** try to attend site visits and ensure that you treat them only as an opportunity to seek information and to observe the site
- **Do** ask the Officers at the site visit questions or seek clarification for them on matters which are relevant to the site inspection
- **Do not** express opinions or views to anyone
- **Do not** hear representations from any parties other than as set out in the Site Inspections Protocol. Make it clear that any representations must focus only on site factors and site issues. Where you are individually approached by an applicant or a third party advise them that they should make their representations in writing to the authority and direct them to or inform the officer present
- **Do not** enter a site which is subject to a proposal other than is part of an official site visit even in response to an invitation as this may give the impression of bias unless
  - (a) you feel that it is essential for you to visit the site other than through attending the official site visit
  - (b) you have first spoken to the Development Control Manager about your intention to do so and why (which will be recorded on the file) and you can ensure that you will comply with these good practice rules on site visits

## 11 Sanctions

The purpose of this Code is to provide guidance to Members in relation to the performance of the Councils planning function. The application of and adherence to the Code is intended to build public confidence in the Councils planning system and to produce a strong platform for planning decision-making. The Code does not remove the responsibility of Members to exercise their statutory discretion to determine the merits of individual applications or proposals.

A failure to adhere to the Code gives rise to potential consequences to the Council and individual Members, especially if this results in a pattern of inconsistency. The normal sanction of the democratic process is through the ballot box. Councillors may make a reputation in their community not only for their beliefs but also for their general conduct.

Consistency and fairness are important qualities in the public eye and they are vital to the conduct of the Planning Committee.

Beyond the normal democratic process a number of specific consequences can be identified

- **The Local Government Ombudsman**

Although the Local Government Ombudsman will not investigate the balance of argument in any planning decisions she/he may agree to investigate a planning complaint if it concerns the manner in which a decision was taken. If it is found injustice has been caused by maladministration in the light of statutory or established Council procedures she/he will recommend redress which may take the form of compensation.

Councillors who breach the national Code of Conduct may open themselves up to complaints of misconduct which will be dealt with by the Local Government Ombudsman. The Local Government Ombudsman has extensive powers to investigate a complaint. If a complaint is upheld a formal report can be sent either to the Council's Standards and Ethics Committee or the Adjudication Panel for Wales.

Such complaints may be referred to the Council's Monitoring Officer for investigation and the Standards Committee for determination and remedy.

- **The Adjudication Panel for Wales**

The Adjudication Panel for Wales is an independent body established under Part III of the Local Government Act 2000. The role of the panel is to form tribunals to

consider whether Members have breached their authority's statutory Code of Conduct.

The panel will also hear appeals by Members against decisions of the Council's Standards and Ethics Committee.

- **Appeals to the National Assembly for Wales**

An applicant who has been refused planning permission has a right of appeal to the National Assembly for Wales. If an appeal is successful and it shown that the Council's conduct in dealing with the matter was unreasonable to the appellant costs may be awarded against the Council. All appeals are administered by the Planning Inspectorate.

- **Powers of the National Assembly for Wales**

The National Assembly for Wales possesses a range of powers which could be exercised where a Local Planning Authority appears to make inconsistent decisions or decisions which are seriously in conflict with National and Development Plan Policies. This could involve the greater use of the power to call in applications whereby an application will be determined by the National Assembly following a Public Inquiry. Where permission has already been granted by the Council powers exist to revoke or modify permissions or to require discontinuance of a land use which if exercised would give rise to a liability to compensate on the part of the Council

- **Judicial Review**

If objectors are convinced that the Council in determining to grant an application did not observe their statutory observations to carry out all necessary procedures base their decision on the development plan and take in to account all representations they may apply for Judicial Review of the decision which might result in it being quashed. In such circumstances it would be normal for the costs of the applicant to be awarded against the Council.

- **District Auditor**

Each of the above courses of action could result in significant extraordinary costs to the Council. These costs will be closely examined by the District Auditor. Where it appears to an Auditor that a loss has been incurred or a deficiency caused in the Council's accounts by the wilful misconduct of any person she/he is required to certify that the loss or deficiency is due to that person and it may therefore lead to a formal report to Council in accordance with the powers granted to District Auditors under the Local Government Act 2000.

**APPENDIX 1 – Declaration Form**

**APPENDIX 2 – Declarable Interest flow Chart**

**APPENDIX 3**

<h2><b>Sites Visit Code of Practice</b></h2>
--

- 1) Sometimes Members of the Planning Committee need to visit a site to help them make a decision on a planning application. These visits are an extension of the Committee Meeting to enable members to make a visual assessment of the site and its surroundings
- 2) When a site visit is required the Development Control Section of Regulatory Services notifies the owner, if access to the premises is necessary
- 3) Site visits are open to all interested parties, including the general public
- 4) The owner or applicant is advised that although he or his agent may be present at the site visit, it is not an opportunity to make representations to Committee Members. This does not prevent the owner, the applicant, or their advisers pointing out factual matters such as the height of the proposed buildings, position of a window, proposed parking spaces etc. This factual information may be brought to the attention of the planning officers who will communicate it to the Planning Committee.
- 5) The Development Control Section will notify those who have also submitted written objections to the application. However, where a petition of objection has been lodged, only one of the petitioners is notified of the site visit. Objectors should be aware that the Council cannot require an owner or applicant to allow objectors onto his land, and that their ability to attend the site visit is at the discretion of the owner or applicant. Objectors are advised that the site visit is not an opportunity to make representations to Committee Members. Factual matters may be pointed out to the planning officer who will communicate it to the Planning Committee.
- 6) Local Ward Members will also be notified of the site visit. Ward Members should be aware that they are also allowed to make representations to Planning Committee Members at the discretion of the Chair during the site visit. If a Ward Member wishes to raise a matters of fact, they should bring it to the attention of the planning officer who will then communicate it to the Planning Committee
- 7) The visit will follow a structured format as follows:-
  - If the applicant, owner or agent (“the applicant”) is present, the Chair and planning officer will introduce themselves and thank them for the right to enter their land, the Chair or officer will remind the people attending the site visit of this Code of Practice
  - The Chair will call the site visit to order and will ask the planning officer in attendance to summarise; the application, site history, features of the site, any other relevant matters
  - The officer will also explain to all those attending the site visit that :

- i) the purpose of the site visit is to enable the Planning Committee Members to see the site to enable them to consider and determine the planning application;
  - ii) the visit is not the opportunity for interested parties to lobby any Council member to support or oppose the application;
  - iii) if there are matters of fact, that have not been indicated by the planning officer, or if an interested party would like the Members to consider the site from a particular position they should communicate this to the planning officer who will then bring this to the attention of the Planning Committee;
  - iv) interested parties should put any representations in writing to the Development Control Section of Regulatory Services prior to the application being considered at the Planning Committee Meeting;
  - v) interested parties may discuss the matter with Local Ward Members prior to the Committee Meeting at which the application is to be considered, and be informed that the names, addresses and telephone numbers of Local Ward Members are available.
- At no time during the site visit will the applicant, or any member of the public be allowed to address or question Members of the Planning Committee. Only the Chair or an officer may address the applicant for clarification of matters of fact. Other Members should not address comments to the applicant or other interested parties.
  - At no time will Planning Committee Members debate the merit(s) of the application, and no decision will be made.
  - No hospitality will be accepted during the course of the site visit.
  - The Chair/ officer will close the site visit and if appropriate thank the applicant again for the right to enter the land and for any other assistance.
  - No formal notes will be made at the site visit. An officer will orally update Planning Committee at the Committee Meeting on any new findings or further developments when it next meets to consider the application.

**Proposed Changes to Planning Committee Meeting Arrangements**

<b><u>Proposal</u></b>	<b><u>Constitution Committee Response</u></b>
<b>Time Limits &amp; Timing of Meetings</b>	
<i>Implementation of a Time Limit</i>	Members discussed the feasibility of introducing a time limit to manage the business of the Committee. Overall it was concluded that it would be difficult to set a time limit on meetings, however, it was felt that a number of the draft proposals would improve the management of meetings.
<i>Four Weekly Meetings</i>	This proposal was agreed.
<i>Indicative Timings for each agenda item.</i>	This was agreed as a guideline only, and the Chair would have the discretion to extend the time if necessary. To support the introduction of indicative timings it was proposed that Local Members requiring a site visit should in accordance with the Planning Code of Guidance criteria notify the Chair of the request and the reason for the request in writing prior to the meeting. In addition, any Member proposing to attend the meeting should notify officers in advance of the meeting. It was suggested that a contact number be provided to Members for this purpose.
<b>Room Layout Access</b>	
<i>Development of an action plan to improve the accessibility of the Ferrier Hall.</i>	These proposals were all agreed.
<i>Improve the microphone and speaker system provided at the Ferrier Hall.</i>	
<i>The provision of a projector and screen to assist with the presentation of detailed information.</i>	
<b>Petitions</b>	
<i>To allow open access to the meeting for objectors by removing the requirement for 50 signatures on petitions to allow for the public to speak at Planning Committees and allow one member of the public to speak on each application, which could be a Councillor or other community representative who has been designated to speak on their behalf. Members would be allowed to submit written representations to the Planning Committee.</i>	This proposal was discussed and rejected. It was agreed that the current rule on petitions should remain and that Councillors' rights to speak independently should remain. Members were particularly keen that there was a mechanism for verifying petitions and in particular that petitioners are on the Electoral Register and would be significantly affected by the proposed development.

<b>Local Member Representation</b>	
<i>Local Ward Members be allowed to speak for 3 minutes per ward.</i>	It was recognised that multi Member wards would be disadvantaged if the time was limited to 3 minutes per ward. It was proposed that this be extended to 5 minutes per Local Member.
<b>Order of Speakers</b>	
<i>Revised order of speakers.</i>	<p>The Committee discussed the proposed order of speakers and made some revisions as follows:</p> <ul style="list-style-type: none"> <li>• application to be presented by Officers (to deal with only issues not included in the cover report for example those issues on the late representation sheet) (3 minutes);</li> <li>• petitioner/public objector to speak (3 minutes);</li> <li>• applicant to speak (3 minutes);</li> <li>• Local Ward Member(s) to speak (5 minutes per Member);</li> <li>• Planning Committee to open debate and make decision (15 minutes) the Chair to keep a limit on general debate and draw questions to a close unless in exceptional circumstances there is a need for further debate.</li> </ul>
<i>The time limit for each agenda item/application is 20 minutes but this would be extended at the discretion of the Chair.</i>	In view of the revised timings for the order of speakers this would need to be extended to at least 25 minutes but the Chair to manage this within the allotted time limits.
<b>Late Representation Sheet</b>	
<i>The cut off time for late representations to be 24 hours prior to the schedule start of the meeting.</i>	These proposals were all agreed.
<i>All late representations to be made available at the meeting for Members of the Committee and local ward Members and the public to consider prior to the meeting and any comments on the late representations will be made in the Officer's presentation.</i>	



<b>Member Representations</b>	
<i>Local Members should only be able to make representations to the Planning Committee on applications which are within their ward or would have a direct impact on their own wards as the proposed development is in an adjoining ward.</i>	This proposal was agreed subject to Members from other wards applying to the Chair in writing in advance of the meeting outlining their reasons on planning grounds to be able to speak at Committee on an application not within their ward.
<b>Officer Attendance/Representation</b>	
<i>Officer attendance at the meeting to be at the discretion of the Chief Planning Officer and be applicable in the context of the agenda item. Other Officers will be available to provide answers to specific questions from the Committee Members only in order to assist in their decision making process.</i>	The Committee following discussions proposed that an 'Advocate' officer for the Council's planning position for each planning area would deal with any issues relating to that planning application and that no other Officers be in attendance at the meeting. It was felt that Members of the Committee should be encouraged to seek clarification on any planning issues arising from reports in advance of the meeting.
<b>Site Visits</b>	
<i>Retain the existing informal arrangements for site visits.</i>	This proposal was accepted. It was agreed that attendance of Committee Members at site visits be monitored and the information provided to Party Whips.
<i>Formally constitute a Site Visit Sub Committee of the Planning Committee.</i>	This proposal was rejected.
<b>Community Engagement/Public Information</b>	
<i>Information leaflets written in plain language to be made available at Planning Committee meetings.</i>	These proposals were all agreed.
<i>The Chair to provide an explanation of the role, procedures and protocol of the Planning Committee for the benefit of the public at the start of the meeting.</i>	
<i>Consider the introduction of web casting of Planning Committee meetings. Improve the provision of public information on the Council's website relating to the Planning Committee and planning applications.</i>	

<b>Format of Reports and Minutes</b>	
<i>Planning Committee reports to be printed on different coloured paper according to which part of the City they relate to (for example central, east and west).</i>	These proposals were all agreed.
<i>Clear maps, plans or diagrams to be provided at Planning Committees in support of planning applications (in line with option proposal number 6 i.e., to be projected onto a screen).</i>	The Committee considered a request for the recording and availability for public inspection of votes of Members of the Planning Committee to ensure clarity and to avoid political allegations. The Committee agreed that the current procedure should remain.
<b>Scheme of Delegations</b>	
<i>No change to the current practice</i>	
<b>Member Development</b>	
<i>A basic level of training on planning matters to be provided to all Members on a mandatory basis and in accordance with their respective needs.</i>	This matter was discussed and it was agreed that all Members would be expected to undertake a basic level of training on planning matters in their role as a Councillor, but that this would not be made mandatory.  It was noted that specific training for Chairs and Vice Chairs was to be undertaken in the autumn as part of the Member Development Programme.
<b>Other Issues</b>	
	In addition, Members briefly discussed options for the start time of meetings and consideration of the size of the Committee. No changes were recommended to the current position.

## **PLANNING COMMITTEE MEETING PROCEDURE RULES**

No. Rule

### **1. ESTABLISHMENT OF PLANNING COMMITTEE AND ALLOCATION OF SEATS**

#### **1.1 Establishment**

The establishment, terms of reference and allocation of seats for the Planning Committee will be determined by the Council in accordance with the Council Meeting Procedure Rules.

#### **1.2 Chair and Deputy Chair**

The chair and deputy chair of the Planning Committee shall be elected by the Council in accordance with the Council Procedure Rules.

#### **1.3 Period of office**

The period of office of the chair, deputy chair and members of the Planning Committee will continue until the first meeting following the Annual Meeting of the Council in any year when no Council elections are held. In a year when Council elections are held the period of office will end on the day of the election.

### **2. ORDINARY MEETINGS**

Ordinary meetings of the Planning Committee will take place every 4 weeks, subject to bank holiday provision, in accordance with a calendar of committee meetings approved at the Council's Annual Meeting. Ordinary meetings of the Planning Committee will (as may be appropriate):-

- (a) *elect a person to preside if the chair and deputy chair are not present;*
- (b) *approve the minutes of the last meeting;*
- (c) *receive any petitions and where these Procedure Rules allow hear the address on behalf of any petitioners and any response;*
- (d) *receive any announcements from the chair;*
- (e) *deal with any business from the last meeting of the committee;*
- (f)
- (g) *put questions to the chair or relevant employees of the Council where appropriate on items of business before the committee and to receive responses;*
- (h) *consider requests from members of the committee for items of business to be considered;*
- (i) *consider any other business specified in the agenda of the meeting including 'late representations' relating to planning applications which have been received at least 24 hours prior to the scheduled start of the meeting; and*
- (j) *such other matter or matters which the chair has certified as being urgent.*

### **3. ADDITIONAL (EXTRAORDINARY) MEETINGS**

#### **3.1 Calling additional (extraordinary) meetings**

No. Rule

(a) *Those listed below may request the proper officer to call an additional meeting of the committee in addition to ordinary meetings:-*

- (i) the Council by resolution;*
- (ii) the chair of the committee;*
- (iii) the Head of Paid Service;*
- (iv) the Monitoring Officer;*
- (v) one half of the membership of the committee if they have signed a requisition and presented it to the proper officer.*

*(b) Any request presented in accordance with this Rule must be in writing, specify the business to be transacted at the meeting and be accompanied by a copy of any report for the meeting.*

**3.2 Business**

*Any meeting called in addition to ordinary meetings pursuant to Rule 3.1 will:-*

- (a) elect a person to preside if the chair and deputy chair are not present;*
- (b) consider the item or items of business specified in the request; and*
- (c) such other matter or matters which the Chairman has certified as being urgent.*

**4. TIME AND PLACE OF MEETINGS**

The time and place of meetings will be determined by the proper officer and notified in the agenda.

**5. NOTICE OF AND AGENDA TO MEETINGS**

The proper officer will give notice to the public of the time and place of any meeting in accordance with the Access to Information Procedure Rules. At least three clear days before a meeting, the proper officer will send a summons (notice of meeting) signed by him or her by post to every member of the committee or leave it at their usual place of residence or at a place nominated by the member. The agenda will give the date, time and place of each meeting and specify the business to be transacted, and will be accompanied by such reports as are available.

**6. CHAIR OF MEETING**

**6.1 Chair of the meeting**

The chair of the committee will chair a meeting of the committee and in his or her absence the meeting will be chaired by the deputy chair of the committee (if any). In the absence of the chair and the deputy chair of the committee, the committee will choose a chair to chair the committee. The person presiding at the meeting may exercise any power or duty of the chair.

**6.2 Conduct of the meeting by the chair**

No. Rule

The chair shall conduct the meeting to secure a proper, full and effective debate of business items particularly where a decision is required.

Those wishing to speak on each planning application will do so in the following order:

- (a) Officers to present any issues not included in the Committee report, such as issues on the late representation sheet (3 mins);
- (b) petitioner (if applicable) to speak to any petition of objection (3 mins);
- (c) applicant (if applicable) to exercise right of response to petition (3 mins)
- (d) Members (if present) representing the Ward in which the application is located (5 mins each);
- (e) Members (if present) who do not represent the Ward in which the application is located, subject to such Members formally requesting the Chair, in writing, in advance of the meeting with details of the reasons for the request to speak (5 mins each);
- (f) Planning Committee Members to debate and decide on applications unless the Chair considers that more time is required (15 mins).

## **QUORUM**

The quorum of a meeting will be one quarter of the whole number of members (rounded up to the nearest whole number). If fewer than the quorum attend the meeting or if during any meeting the chair counts the number of members present and declares there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the chair. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting.

## **8. MOTIONS WHICH MAY BE CONSIDERED**

The following motions may be moved provided that they relate to an item of business on the agenda, concern a matter within the terms of reference of the committee and will not purport to exceed the powers delegated to the committee:-

- (a) to appoint a chair of the meeting;
- (b) in relation to the accuracy of the minutes;
- (c) to change the order of business in the agenda;
- (d) to refer something to an appropriate Committee, body or individual for consideration or reconsideration;
- (e) to appoint a sub committee of the committee arising from an item on the agenda for the meeting subject to statutory constraints;
- (f) to receive reports and/or to adopt recommendations of committees or officers;
- (g) to receive reports and/or to adopt recommendations of the Executive;
- (h) to delegate powers to an officer of the Council or a sub-committee subject to the constraints in this Constitution and of law;
- (i) to propose a resolution which differs from that recommended in a report;
- (j) to proceed to the next business;
- (k) that the question be now put;

No. Rule

- (l) to adjourn a debate;
- (m) to adjourn a meeting;
- (n) to exclude the public and press in accordance with the Access to Information Procedure Rules; and
- (o) to not hear further a member named under Rule 15.3 or to exclude him or her from the meeting under Rule 15.4.

9. **RULES OF DEBATE**

9.1 **Content of speeches/debate**

Speeches, discussion and questions must be directed to the matter under discussion or to a personal explanation or point of order. The period allowed for any speech and the number of times a member may be allowed to speak will be determined by the chair subject to the obligation on him or her under Rule 6.2.

9.2 **Point of order**

A member may raise a point of order at any time. The chair will hear them immediately. A point of order may only relate to an alleged breach of these Committee Meeting Procedure Rules or the law. The member must indicate the rule or law and the way in which he/she considers it has been broken. The ruling of the chair on the matter will be final.

9.3 **Personal explanation**

A member may make a personal explanation at any time. A personal explanation may only relate to some material part of an earlier speech or comment by the member which may appear to have been misunderstood in the present debate. The ruling of the chair on the admissibility of a personal explanation will be final.

9.4 **Declarations of interest**

A member may at any time declare a personal interest under the Code of Conduct and when a member stands to make a declaration he/she shall be heard immediately and shall be allowed to make the declaration without interruption.

10. **PREVIOUS DECISIONS AND MOTIONS**

10.1 **Motion to rescind a previous decision**

A motion or amendment to rescind a decision made at a meeting of the committee within the past six months cannot be moved unless a motion approving the rescission has been passed at a meeting of the full Council.

10.2 **Motion similar to one previously rejected**

A motion or amendment in similar terms to one that has been rejected at a meeting of the committee in the past six months cannot be moved unless a

No. Rule

motion approving the rescission has been passed at a meeting of the full Council.

11. **VOTING**

11.1 **Majority**

Unless this Constitution or the law provides otherwise, any matter will be decided by a simple majority of those members voting and present in the room at the time the question was put.

11.2 **Chair's casting vote**

Subject to Rule 11.4 if there are equal numbers of votes for and against, the chair will have a second or casting vote. There will be no restriction on how the chair chooses to exercise a casting vote.

11.3 **Show of hands/Electronic Voting**

The chair will take the vote by show of hands or by use of an electronic voting system if available, whichever the chair decides, or if there is no dissent, by the affirmation of the meeting.

11.5 **Right to require individual vote to be recorded**

Where any member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether they voted for or against the motion or abstained from voting.

12. **MINUTES**

12.1 **Signing the minutes**

The chair will sign the minutes of the proceedings of the committee at the next suitable meeting. The chair will move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

12.2 **Form of minutes**

Minutes will contain all motions and amendments in the exact form and order the chair put them but otherwise the form of the minutes will be a matter for the proper officer.

13. **RECORD OF ATTENDANCE**

All Councillors present during the whole or part of a meeting must accurately record their attendance on the record of attendance provided for that purpose.

No. Rule

14. **MEMBERS OF THE PUBLIC**

14.1 **Exclusion of members of the public**

Members of the public and press may only be excluded either in accordance with the Access to Information Procedure Rules or Rule 16 (Disturbance by Public).

14.2 **Right of Petitioners to address committee**

- (a) When a petition contains signatures of not less than fifty Cardiff electors with their addresses, a substantial proportion of whom could reasonably be expected to be affected by the matter to which the petition relates, one person from amongst those signing the petition may address a committee to which the petition has been referred on the subject matter of the petition for up to three minutes.
- (b) In any case where the petitioners object to a planning application, the applicant will also be given an opportunity to be heard.
- (c) *Any petition presented direct to a committee shall be delivered to the relevant Chief Officer at least seven clear days prior to the date of the meeting of the committee at which it is to be presented, to enable the applicant to be notified if appropriate and to be present at the meeting of the committee if the applicant so wishes.*
- (a) *When a petitioner has been heard by the Planning Committee under this Procedure Rule, no further petition on the same item shall be considered and no further address shall be heard on that item, within six months of the committee meeting at which the petition was first considered or the petitioner heard.*

15. **MEMBERS' CONDUCT**

15.1 **Members wishing to speak**

When a member speaks at a committee he or she must address the meeting through the chair. If more than one member speaks, the chair will ask one to speak and the others must remain silent until invited to speak unless he or she wishes to make a point of order or a point of personal explanation or to declare an interest.

15.2 **Chair seeking order**

When the chair asks for order the meeting must be silent.

15.3 **Member not to be heard further**

If a member persistently disregards the ruling of the chair by behaving



No. Rule

improperly or offensively or deliberately obstructs business, the chair may move that the member be not heard further. If seconded, the motion will be voted on without discussion. If the motion is passed the named member may not discuss or debate any further business whilst it is transacted at the meeting.

**15.4 Member to leave the meeting**

If the member continues to behave improperly or offensively or deliberately obstructs business after such a motion is carried, the chair may move that either the member leaves the meeting or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion. If the motion is passed the named member must leave the meeting forthwith.

**15.5 General disturbance**

If there is a general disturbance making orderly business impossible, the chair may adjourn the meeting for as long as he/she thinks necessary.

**16. DISTURBANCE BY PUBLIC**

**16.1 Removal of member of the public**

If a member of the public interrupts or disrupts proceedings of a committee, the chair will warn the person concerned. If they continue to interrupt or causes disruption, the chair will order their removal from the meeting room.

**16.2 Clearance of part of meeting room**

If there is a general disturbance in any part of the meeting room open to the public, the chair may call for that part to be cleared.

**17. *COUNCILLORS ATTENDING PLANNING COMMITTEES OF WHICH THEY ARE NOT MEMBERS***

*A Member, who is not a member of the Planning Committee, may attend a Planning Committee meeting and with the permission of the Chair may speak but may not vote subject to the following:*

*(a) where the Councillor is required to declare an interest and withdraw from the meeting under the Members' Code of Conduct; or*

*(b) where the City and County Solicitor or his/her representative advises that as a matter of law non-members of a committee should withdraw.*

**18. RECORDING OF PROCEEDINGS OF COMMITTEES**

No recording shall be made of the proceedings of meetings of committees whether audio or visual and by whatever method except with the express authorisation of the meeting. If a person records the proceedings of any meeting (or causes such recording to be effected) without authorisation then the chair

No. Rule

will order their removal from the meeting room and shall not permit them to be admitted to a further meeting of the committee except on a written undertaking to desist from such recording and on the destruction of such recordings as may have been made and anything derived from them.

19. **SUSPENSION OF COMMITTEE PROCEDURE RULES**

All or any of these are Committee Rules of Procedure except Rule 11.5 may be suspended by motion on notice or without notice if at least one half of the whole number of the Councillors are present. Suspension can only be for the duration of the meeting.

20. **MEMBER DEVELOPMENT TRAINING**

All Members of the County Council are expected to undertake a basic level of training on planning matters in their role as local Members. Specific training will be provided to the Chair, Deputy Chair and members of the Planning Committee as part of the Member Development Programme.