
PART 5 - SECTION 3 – PLANNING PROTOCOL

INDEX

Title, Commencement, Application and Effect	5/3.1 to 5/3.5
Interpretation	5/3.6
“the Council”	5/3.6.1
“the Planning Committee”	5/3.6.2
“the Planning Functions”	5/3.6.3
“Decision Making Matrix”	5/3.6.4
“Planning Application”	5/3.6.5
“Councillor with a Personal Interest”	5/3.6.6
“Councillor with a Prejudicial Interest”	5/3.6.7
“Councillor with a Dispensation”	5/3.6.8
“Local Representative”	5/3.6.9
“Decision Maker”	5/3.6.10
“Call-in Procedure”	5/3.6.11
“Decision Making Process”	5/3.6.12
“Public Speaking Procedures”	5/3.6.13
“Lobbying”	5/3.6.14
“The Head of Development Management”	5/3.6.15
“Councillor’s Family or a Relative of a Councillor”	5/3.6.16
“Friend(s)”	5/3.6.17
Protocol’s Aims	5/3.7 to 5/3.14
Delegation of the Planning Functions	5/3.15 to 5/3.18
Roles of Councillors – General Provisions	5/3.19 to 5/3.47
Introduction	5/3.19 to 5/3.24
”Decision Maker” Role	5/3.25 to 5/3.27
”Local Representative” Role	5/3.28 to 5/3.32
Non Planning Committee Councillor Role	5/3.33
“Call-In”	5/3.34 to 5/3.35
Councillor with a Personal Interest	5/3.36
Councillor with a Prejudicial Interest	5/3.37 to 5/3.39
Councillor with a Dispensation	5/3.40 to 5/3.41
Predisposition and Predetermination	5/3.42 to 5/3.43
A Councillor’s Direct Connection with Applicants and Others	5/3.44 to 5/3.46
Councillors Should Seek Advice	5/3.47
Councillors with Personal and Prejudicial Interests.	5/3.48 to 5/3.58

PART 5 - SECTION 3 – PLANNING PROTOCOL

Definition of “Councillor with a Personal Interest”	5/3.48
Examples of Personal Interests	5/3.49 to 5/3.50
Definition of “Councillor with a Prejudicial Interest”	5/3.51
Development Proposals Involving Councillors	5/3.52 to 5/3.57
Councillors Should Seek Advice	5/3.58
Councillor with a Dispensation	5/3.59 to 5/3.61
Role of Decision Maker	5/3.62 to 5/3.66
Obligations of “Decision Maker” Decision Maker Who Has Exercised Power of Call-In	5/3.62 to 5/3.65 5/3.66
Local Representative	5/3.67 to 5/3.73
Obligations of “Local Representative” Rights of “Local Representative” Councillors Should Seek Advice	5/3.67 to 5/3.71 5/3.72 5/3.73
Decision Making Process	5/3.74
Decision Making by the Planning Committee	5/3.75 to 5/3.105
Planning Committee Determination Principles	5/3.75 to 5/3.80
Deferrals	5/3.81
Reconsidered Applications	5/3.82
Decisions Contrary to Officer Recommendations	5/3.83 to 5/3.84
Modifying Planning Conditions	5/3.85 to 5/3.86
Predetermination	5/3.87
Correspondence and Other Relevant Information Received by members of the Planning Committee	5/3.88 to 5/3.90
Site Inspections	5/3.91 to 5/3.92
Report on a Planning Application by the Head of Development Management	5/3.93 to 5/3.94
Speaking at Planning Committee Meetings	5/3.95 to 5/3.98
Roles and Duties of the Committee Chair / Vice-Chair	5/3.99 to 5/3.105
Development Management	5/3.106 to 5/3.114

PART 5 - SECTION 3 – PLANNING PROTOCOL

Decision Making by the Head of Development Management	5/3.115 to 5/3.116
Planning Applications Submitted by Officers	5/3.117 to 5/3.121
Planning Appeals	5/3.122 to 5/3.128
Training	5/3.129 to 5/3.131
Regular Review of Decisions	5/3.132 to 5/3.134
Members' Code of Conduct	5/3.135
Appendix 1 to Section 5/3 – Planning Protocol Decision Making Matrix	Section 1

PART 5 - SECTION 3 – PLANNING PROTOCOL

TITLE, COMMENCEMENT, APPLICATION AND EFFECT

TITLE

5/3.1 The title of this Protocol is “Planning Protocol”.

COMMENCEMENT

5/3.2 This Revision of the Protocol shall come into force on 21st January, 2015.

5/3.3 This Protocol shall be reviewed at least every 2 years by the Planning Committee and the Democratic Services Committee.

APPLICATION

5/3.4 This Protocol:

5/3.4.1 regulates, guides and informs Councillors and Officers of Powys County Council in all matters concerning the exercise of the Planning Functions.

5/3.4.2 explains in Appendix 1 (the Decision Making Matrix) which of the Planning Functions will be dealt with and determined by the Planning Committee and which will be dealt with and determined by the Head of Development Management

5/3.4.3 aims to help applicants, agents, and anyone likely to be affected by development and planning related issues have a greater insight to the Council’s processes and procedures for dealing with the Planning Functions.

EFFECT

5/3.5 Failure to follow this Protocol without good reason could be taken into account in investigations into possible maladministration or alleged breaches of the Members’ Code of Conduct or have implications for the standing of Councillors and professional officers

INTERPRETATION

5/3.6 In this Protocol:

5/3.6.1 “**the Council**” means Powys County Council.

5/3.6.2 “**the Planning Committee**” means the Committee appointed by the Council (currently the Planning, Taxi Licensing and Rights of Way Committee) under its Constitution to exercise the Planning Functions.

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.6.3** “**the Planning Functions**” means all those functions set out in the Decision Making Matrix and reference to “Planning Function” or “a Planning Function” shall be construed accordingly.
- 5/3.6.4** “**Decision Making Matrix**” means those arrangements set out in Appendix 1 for determining the responsibility, as between the Planning Committee and the Head of Development Management, for discharging the Planning Functions
- 5/3.6.5** “**Planning Application**” means any application to the Council for an approval, agreement, permission, determination, consent, certificate or authorisation of any kind in respect of a Planning Function.
- 5/3.6.6** “**Councillor with a Personal Interest**” has the meaning given by rule 5/3.48, 5/3.49 and 5/3.50 of this Protocol.
- 5/3.6.7** “**Councillor with a Prejudicial Interest**” has the meaning given by rule 5/3.51 of this Protocol.
- 5/3.6.8** “**Councillor with a Dispensation**” has the meaning given by rules 5/3.59 to 5/3.61 of this Protocol.
- 5/3.6.9** “**Local Representative**” has the meaning given by rules 5/3.67 to 5/3.73 of this Protocol and for the avoidance of doubt more than one Councillor can undertake the role of “Local Representative” in relation to a Planning Application.
- 5/3.6.10** “**Decision Maker**” has the meaning given by rules 5/3.62 to 5/3.65 of this Protocol.
- 5/3.6.11** “**Call-in Procedure**” means the Procedure set out in Section A2 of Appendix 1 (the Decision Making Matrix) and reference to a Councillor exercising “**the power of Call-In**” shall be construed accordingly.
- 5/3.6.12** “**Decision Making Process**” has the meaning given by rule 5/3.74 of this Protocol.
- 5/3.6.13** “**Public Speaking Procedures**” has the meaning given by rules 5/3.95 to 5/3.98 of this Protocol.
- 5/3.6.14** “**Lobbying**” means any attempt (successful or not) to persuade or influence a Councillor or planning officer towards a particular point of view in relation to a planning application
- 5/3.6.15** “**the Head of Development Management**” means Head of Regeneration, Property and Commissioning including any officer authorised by that Head of Service to exercise those powers, duties, responsibilities and decision making on their behalf.
- 5/3.6.16** “**Councillor’s Family or a Relative of a Councillor**” means the wife, husband, partner, son, daughter, son-in-law, daughter-in-law, grandchild, grandfather, grandmother, uncle, aunt, nephew, niece, and cousin of the Councillor, or the Councillor’s spouse or partner, or any other person related by birth or marriage to the Councillor or the Councillor’s spouse or partner, with whom they live, or with whom the Councillor or the Councillor’s spouse or partner has regular personal contact.

For the purposes of the above definition “marriage” shall be taken to include co-habitation.

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.6.17** “**Friend(s)**” means close personal associate(s) of the Councillor or the Councillor’s spouse or partner including neighbours and individuals with whom the Councillor or the Councillor’s spouse or partner has regular social contact, including membership of the same club, association or organisation as the Councillor or the Councillor’s spouse or partner.
- 5/3.6.18** “**Clear Working Days**” means for the purposes of this Planning Protocol only days which do not include the day of the meeting, the day on which the request is made, weekends and bank holidays.

PROTOCOL’S AIMS

PROTOCOL AIMS TO:

- 5/3.7 Regulate, guide, inform and assist Councillors and Officers, potential developers, interested parties and members of the public in relation to the exercise of the Planning Functions.
- 5/3.8 Supplement the Members’ Code of Conduct contained in the Council’s Constitution, the Code of Professional Conduct of the Royal Town Planning Institute and the Protocol on Member / Officer Relations (Council Constitution Part 6, Section 1).
- 5/3.9 Provide specific guidance on ethical matters.
- 5/3.10 Ensure that decisions taken in pursuance of the Decision Making Matrix are based on informed judgement within a firm policy and legal context and made in an open, transparent, impartial way with justifiable reasons.
- 5/3.11 Recognise the need to control development in the public interest whilst acknowledging that decisions in this area necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings.
- 5/3.12 Assist Councillors with their duties, obligations and responsibilities:
- 5/3.12.1 to their constituents (including those who did not vote for them)
 - 5/3.12.2 to the whole community and County (in respect of which they have an overriding duty); and
 - 5/3.12.3 to all individuals and bodies directly and indirectly concerned with Planning Applications:
 - 5/3.12.3.1 not to favour, or be seen to favour, any individuals or groups or be unduly influenced by the opinions of others, and discharge the responsibility that they alone have to decide what view to take; and
 - 5/3.12.3.2 to decide (where they are members of the Planning Committee) all Planning Applications which fall to be

PART 5 - SECTION 3 – PLANNING PROTOCOL

determined by the Planning Committee as required by law in accordance with the statutory development plan (i.e. the Powys Unitary Development Plan or Local Development Plan) having taken into account the advice of appropriate officers and relevant representations made in respect of such Planning Applications and, what weight should be attached to them.

PUBLICATION OF THE CODE

5/3.13 This Planning Code of Conduct is publicised and made publicly available, and is incorporated into the Council's Constitution.

COUNCILLORS SHOULD SEEK ADVICE

5/3.14 A Councillor in any doubt as to his position under this Protocol or the Members' Code of Conduct should always seek the advice of the Monitoring Officer.

DELEGATION OF THE PLANNING FUNCTIONS

DELEGATION TO THE PLANNING COMMITTEE AND THE HEAD OF DEVELOPMENT MANAGEMENT

5/3.15 The Council has delegated responsibilities for the Planning Functions to the Planning Committee and to the Head of Development Management in accordance with Appendix 1 (the Decision Making Matrix).

5/3.16 The Council may from time to time review these delegation arrangements and make changes to Appendix 1 (the Decision Making Matrix) and it is essential that Councillors, Officers, Applicants, Agents and others always refer to the latest version of the Matrix.

5/3.17 The Head of Development Management is responsible for ensuring that proper and timely procedures and arrangements are in place so that all Councillors may be aware of:

5/3.17.1 Planning Applications within or affecting their electoral divisions received and being dealt with and determined by the Head of Development Management; and

5/3.17.2 Decisions made in respect of those Planning Applications by the Head of Development Management.

5/3.18 Nothing in Appendix 1 (the Decision Making Matrix) prevents the Planning Committee from delegating a function to an officer in consultation with the Chairman of the Committee.

PART 5 - SECTION 3 – PLANNING PROTOCOL

ROLES OF COUNCILLORS – GENERAL PROVISIONS

INTRODUCTION

- 5/3.19 The Council has one Planning Committee comprising 21 Councillors which determines those “Planning Applications” referred to it for decision in accordance with the “Decision Making Matrix”.
- 5/3.20 A “Planning Application” will, however, in accordance with the “Decision Making Matrix”, more often than not be determined by the Head of Development Management rather than the Planning Committee. In this situation those Councillors who sit on the Planning Committee will have no role to play in the decision making process.
- 5/3.21 In respect of a Planning Application in their electoral division or which affects their electoral division a Councillor may exercise the power of call-in (so that the application is dealt with by the Planning Committee and not the Head of Development Management).
- 5/3.22 A Councillor may also in respect of a Planning Application in their electoral division or which affects their electoral division attend a meeting of the Planning Committee when that application is determined to put forward the views of those constituents they represent.
- 5/3.23 The roles and powers of Councillors may be restricted where there are conflicts between their position as Councillors and their private or outside interests.
- 5/3.24 These roles and powers of Councillors are defined in more detail below.

“DECISION MAKER” ROLE

- 5/3.25 A Councillor who is a member of the Planning Committee and who takes part (or who intends to take part) at a meeting of the Planning Committee in the determination of a particular Planning Application will for the purposes of this Protocol be a “Decision Maker” in relation to such Planning Application
- 5/3.26 A Councillor who is a Decision Maker shall comply with the provisions of the **Decision Making Process** and with the Members’ Code of Conduct generally.
- 5/3.27 For the avoidance of doubt a Councillor who is a “Decision Maker” shall not make representations on behalf of a Town or Community Council under the Public Speaking Procedures.

“LOCAL REPRESENTATIVE” ROLE

- 5/3.28 A Councillor who is not a member of the Planning Committee but who, in respect of a Planning Application in their electoral division or which affects

PART 5 - SECTION 3 – PLANNING PROTOCOL

their electoral division, attends (or who intends to attend) a meeting of the Planning Committee when it considers the Planning Application in question to make representations about the Planning Application on behalf of their constituents will for the purposes of this Protocol be a “Local Representative” in relation to that Planning Application. For the avoidance of doubt a Councillor is not a Local Representative on the basis that the Applicant or any person who has made representations in respect of the Planning Application resides in their electoral division.

- 5/3.29 A Councillor who is a member of the Planning Committee and who decides not to be a Decision Maker in relation to a Planning Application which is in their electoral division or which affects their electoral division, but who attends (or intends to attend) a meeting of the Planning Committee when it considers the Planning Application in question to make representations about the Planning Application on behalf of their constituents will for the purposes of this Protocol be a “Local Representative” in relation to that Planning Application. For the avoidance of doubt a Councillor is not a Local Representative on the basis that the Applicant or any person who has made representations in respect of the Planning Application resides in their electoral division.
- 5/3.30 A Councillor who is a member of the Planning Committee and who decides to be a Decision Maker in relation to a Planning Application which is in their electoral division or which affects their electoral division may arrange for another Councillor to represent their constituents in relation to the Planning Application in question and to make representations about the Planning Application on behalf of their constituents at meetings of the Planning Committee. In this situation this other Councillor will for the purposes of this Protocol be a “Local Representative” in relation to that Planning Application.
- 5/3.31 A Councillor who is a Local Representative shall comply with the **Public Speaking Provisions set out in rules 5/3.95 to 5/3.98** and with the Members’ Code of Conduct generally. Further provisions relating to the “Local Representative” role are also contained in rules 5/3.67 to 5/3.73.
- 5/3.32 For the avoidance of doubt a Councillor may choose (where they are a Town or Community Council member) to make representations on behalf of a Town or Community Council in their electoral division but that Councillor shall not also make representations as Local Representative under the Public Speaking Procedures.

NON-PLANNING COMMITTEE COUNCILLOR ROLE

- 5/3.33 Subject to the provisions in this Protocol relating to a “Councillor with a Personal Interest”, “Councillor with a Prejudicial Interest” and “Councillor with a Dispensation” and to the provisions of the Members’ Code of Conduct generally a Councillor who is not a member of the County Planning Committee (whether or not they play or intend to play the role of “Local Representative) will be free to :

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.33.1 discuss any Planning Application with the applicant /agent /objector /lobby group etc;
- 5/3.33.2 attend any locally organised meeting concerning the application
- 5/3.33.3 attend any Town or Community Council Meeting concerning the application and speak about the application (including expressing a view either for or against the application) and (if a member of the Town or Community Council) vote upon the application
- 5/3.33.4 relay relevant information about the application to a planning officer.
- 5/3.33.5 seek information / clarification about the application from a planning officer.

PROVIDED ALWAYS that in so doing the Councillor must never seek to lobby or improperly influence a Decision Maker, the Head of Development Management or a Planning Officer in relation to the determination of a Planning Application.

“CALL-IN”

- 5/3.34 A Councillor (whether a member of the Planning Committee or not) may, in respect of a Planning Application in their electoral divisions, or which affect their electoral division, request, in accordance with the provisions of Part 3 of Appendix 1 (the Decision Making Matrix), that such Planning Application which ordinarily under Part 1 of Appendix 1 (the Decision Making Matrix) would be determined by the Head of Development Management will be determined by the Planning Committee and in this Protocol a Councillor making such a request will be referred to as exercising “the power of Call-in”.

A Councillor exercising the power of “Call-in” may withdraw the “Call-in” by written notification to the Head of Development Management “ at any time before the agenda for the meeting has been published in accordance with Part 4, Section 3 of the Constitution.

A Councillor exercising the power of Call-In is reminded that s/he will need to register a request to speak in accordance with Rule 5/3.95.3 and failure to do so will preclude the Councillor from speaking.

- 5/3.35 An objection from a Town or Community Council will not automatically trigger an application being considered by the Planning Committee.

COUNCILLOR WITH A PERSONAL INTEREST

- 5/3.36 “A Councillor with a Personal Interest” in relation to a Planning Application who attends a meeting of the Planning Committee (whether as a member of the Committee or not) when that Planning Application is considered must, in accordance with the Members’ Code of Conduct, disclose orally to

PART 5 - SECTION 3 – PLANNING PROTOCOL

that meeting the existence and nature of the Personal Interest in question before or at the commencement of the consideration of the Planning Application or when the Personal Interest becomes apparent to the Councillor. The role of a Councillor with a Personal Interest who also has a prejudicial interest under the Members' Code of Conduct is further limited as detailed in rules 5/3.37 to 5/3.39 below.

COUNCILLOR WITH A PREJUDICIAL INTEREST

5/3.37 "A Councillor with a Prejudicial Interest" in relation to a Planning Application who is a member of the Planning Committee may not in respect of that Planning Application (unless granted a dispensation by the Standards Committee to be a "Decision Maker") be a "Decision Maker" but may undertake the role of "Local Representative" in respect of that Planning Application.

5/3.38 "A Councillor with a Prejudicial Interest" in relation to a Planning Application who is not a member of the Planning Committee may undertake the role of "Local Representative" in respect of that Planning Application and may apply to the Standards Committee for a dispensation as detailed in the provisions of this Protocol" below and in rule 5/3.40 to 5/3.41 relating to a "Councillor with a Dispensation".

5/3.39 "A Councillor with a Prejudicial Interest" in relation to a Planning Application who is not a member of the Planning Committee may if s/he determines that their prejudicial interest is so significant that it would prejudice their ability to undertake the "Local Representative" role, appoint another Councillor to undertake the "Local Representative" role by giving written notice to the Head of Development Management who will arrange for the appointment to be placed on the relevant application file. The Councillor who takes over the "Local Representative" role may not be a "Decision Maker" or have a significant Prejudicial Interest which would prejudice their ability to act as the "Local Representative".

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COUNCILLOR WITH A DISPENSATION

5/3.40 A Councillor with a Dispensation attending a meeting of the Planning Committee (whether a member of the Committee or not) to which the dispensation is relevant may only participate in the meeting subject to:-

5/3.40.1 Stating at the Meeting that they are relying on the dispensation; and

5/3.40.2 Giving to the Solicitor to the Council a written notification before or immediately after the close of the Meeting containing:

5/3.40.2.1 Details of the Prejudicial Interest;

5/3.40.2.2 Details of the Planning Application to which the Prejudicial Interest relates;

5/3.40.2.3 Details of, and the date on which, the dispensation was granted; and

PART 5 - SECTION 3 – PLANNING PROTOCOL

5/3.40.2.4 The Councillor's signature.

5/3.41 A Councillor with a Dispensation making written or oral representations in reliance upon the dispensation must provide details of the dispensation within such written or oral representations, and in the latter case, provide written notification to the Solicitor to the Council within 14 days of making the representations.

PREDISPOSITION AND PREDETERMINATION

5/3.42 A Councillor who is a Decision Maker may be predisposed to a particular view. However the Councillor must be open to the possibility that they will hear arguments during the debate about the Planning Application that, will change their mind about how they intend to vote. As long as the Councillor is willing to keep an open mind about the Planning Application they are entitled to take part on any vote on it.

5/3.43 A Decision Maker must exercise care not to predetermine a Planning application. Predetermination is where the Councillor's mind is closed to the merits of any arguments which differ from their own about a Planning Application. A Decision Maker should avoid giving the appearance that they have decided how they will vote at the meeting and that nothing will change their mind.

A COUNCILLOR'S DIRECT CONNECTIONS WITH APPLICANTS AND OTHERS

5/3.44 If a Councillor advises applicants, agents, objectors or other interested parties about the likely acceptability of planning proposals then in relation to planning applications relating to those proposals that Councillor cannot undertake the role of "Decision Maker" and may need to consider whether they fall within the category of a "Councillor with a Prejudicial Interest"

5/3.45 A Councillor who wishes to ensure that they remain eligible to carry out the role of "Decision Maker" should advise prospective applicants to contact a Planning Officer for advice on both merits and procedures

5/3.46 **A Councillor should never seek to influence / lobby fellow Councillors or officers in these circumstances.**

COUNCILLORS SHOULD SEEK ADVICE

5/3.47 A Councillor in any doubt as to his position under this Protocol or Members' Code of Conduct should always seek the advice of the Monitoring Officer.

PART 5 - SECTION 3 – PLANNING PROTOCOL

COUNCILLORS WITH PERSONAL AND PREJUDICIAL INTERESTS

DEFINITION OF “COUNCILLOR WITH A PERSONAL INTEREST”

5/3.48 Under the Members’ Code of Conduct a Councillor (whether a member of the Planning Committee or not) must consider whether they have a **PERSONAL INTEREST** (as defined in the Members’ Code of Conduct) in respect of a Planning Application and whether the Members’ Code of Conduct requires them to disclose that interest in the event of the Councillor attending a meeting of the Planning Committee which considers that Planning Application. A Councillor who is required to declare a personal interest in respect of a Planning Application at a meeting of the Planning Committee will for the purposes of this Protocol be a **COUNCILLOR WITH A PERSONAL INTEREST** in relation to that Planning Application.

EXAMPLES OF PERSONAL INTERESTS

5/3.49 Paragraph 10 of the Members’ Code of Conduct details what will constitute a “personal Interest” for the purposes of the Code and, by extension through rule 5/3.48 above, this Protocol. Illustrative of the types of interest referred to in Paragraph 10 are the categories listed below. They must not be taken as authoritative. Reference to Paragraph 10 must always be made to ascertain with certainty whether a Councillor is a Councillor with a Personal interest.

5/3.50 Planning Applications concerning:

- 5/3.49.1 The Councillor
- 5/3.49.2 The Councillor’s family;
- 5/3.49.3 The Councillor’s friends;
- 5/3.49.4 The Business interests of the Councillor;
- 5/3.49.5 The Land interests of the Councillor or their family;
- 5/3.49.6 An organisation of which the Councillor is a member (including those to which the Councillor has been elected, appointed or nominated by the Council;
- 5/3.49.7 Projects and schemes in respect of which the Councillor (or members of the family of the Councillor) has drawn plans for their family / friends or for other people or acted as agents for their family friends or for other people,

DEFINITION OF “COUNCILLOR WITH A PREJUDICIAL INTEREST”

5/3.51 Where a Councillor (whether a member of the Planning Committee or not) is a Councillor with a Personal Interest in relation to a Planning Application that Councillor will, for the purposes of this Protocol, also be a **COUNCILLOR WITH A PREJUDICIAL INTEREST** in respect of that Planning Application if the interest of that Councillor is one which a member of the public with knowledge of the relevant facts would

PART 5 - SECTION 3 – PLANNING PROTOCOL

reasonably regard as so significant that it is likely to prejudice that Councillor's judgement of the public interest.

DEVELOPMENT PROPOSALS INVOLVING COUNCILLORS

- 5/3.52 A Planning Application by a Councillor or their family and relatives, close friends and business associates can easily give rise to suspicions of impropriety. It is vital that it is handled in a way that gives no grounds for accusations of favouritism.
- 5/3.53 A serving Councillor who prepares plans or generally acts as an agent for people submitting a Planning Application should never be a Decision Maker or Local Representative in relation to that Planning Application and should not seek to lobby / influence fellow Councillors or officers.
- 5/3.54 Where a Councillor is the applicant for a planning permission they:
- 5/3.54.1 must appoint an agent to act on their behalf;
 - 5/3.54.2 must notify, in writing, the Head of Development Management that such application has been submitted;
 - 5/3.54.3 should take no part in the processing of that application or endeavour to influence the final decision on the application;
 - 5/3.54.4 seek to influence / lobby fellow Councillors or officers
 - 5/3.54.5 must not attend any meeting of the Planning Committee whilst it is considering their application;
 - 5/3.54.6 must regard themselves as being both a Councillor with a Personal Interest and a Councillor with a Prejudicial Interest.
- 5/3.55 Any Planning Application submitted by a Councillor will be determined by the Planning Committee and shall never be dealt with by officers under 'delegated powers'. The Council's Planning Solicitor should confirm in the Planning Officer's report to the Planning Committee that the application has been processed normally and therefore must be given the opportunity to review the file.
- 5/3.56 Where a Planning Application is made by a member of a Councillor's family, a friend or business associate of the Councillor or an organisation in which the Councillor holds a position of responsibility the Councillor shall advise the Head of Development Management of the submission of that application, and the relationship between the Councillor and that individual. The Head of Development Management shall determine whether the nature of the relationship would warrant the application being referred to the Planning Committee for determination or whether it could be determined by him under the Decision Making Matrix. In any event the Councillor should not seek to influence / lobby fellow Councillors or officers in respect of the application
- 5/3.57 A Councillor must have regard to the Members' Code of Conduct when dealing with a Planning Application involving another Councillor.

PART 5 - SECTION 3 – PLANNING PROTOCOL

COUNCILLORS SHOULD SEEK ADVICE

5/3.58 A Councillor in any doubt as to his position under this Protocol or Members' Code of Conduct should always seek the advice of the Monitoring Officer.

COUNCILLOR WITH A DISPENSATION

DEFINITION OF COUNCILLOR WITH A DISPENSATION

5/3.59 A "Councillor with a Prejudicial Interest" who is a member of the Planning Committee may undertake the Role of Local Representative, but shall leave the meeting room after making their presentation. If a Local Representative with a prejudicial interest wishes to remain in the meeting room or wishes to act as Decision Maker s/he may apply for a dispensation from the Council's Standards Committee. A Councillor undertaking the role of Local Representative with a prejudicial interest is not allowed to make written representations in lieu of their right to speak at the meeting.

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MPORTANT CHANGE –
Reps to Ombudsman

5/3.60 A "Councillor with a Prejudicial Interest" who is not a member of the Planning Committee may undertake the Role of Local Representative, but shall leave the meeting room after making their presentation. If a Local Representative with a prejudicial interest wishes to remain in the meeting room or wishes to act as Decision Maker s/he may apply for a dispensation from the Council's Standards Committee. A Councillor undertaking the role of Local Representative with a prejudicial interest is not allowed to make written representations in lieu of their right to speak at the meeting.

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MPORTANT CHANGE –
Reps to Ombudsman

5/3.61 A Councillor who has obtained such dispensation as is mentioned in paragraphs 5/3.59 and 5/3.60 shall for the purposes of this Protocol be a "Councillor with a Dispensation".

ROLE OF "DECISION MAKER"

OBLIGATIONS OF "DECISION MAKER"

5/3.62 A Decision Maker in relation to any Planning Application to be determined by the Planning Committee:

5/3.62.1 **shall not** discuss such a Planning Application with, or seek information about that Planning Application from, an applicant/agent/objector or any third party (including another Councillor – whether a member of the Planning Committee or not) other than the Head of Development Management or the Monitoring Officer prior to the Planning Committee considering and determining that Planning Application. **In the event that any such individual attempts to hold such discussions with or impart information to the Decision Maker that individual shall be advised by the Decision Maker of the**

PART 5 - SECTION 3 – PLANNING PROTOCOL

- fact that under the requirements of this Protocol they are not allowed to discuss or receive information concerning such Planning Application and that the proper course of action is for the individual to discuss or relay information about the Planning Application to the Head of Development Management; the Decision Maker shall also notify the Head of Development Management of such approach to them forthwith and disclose the fact of this approach to them at the appropriate meeting of the Planning Committee.
- 5/3.62.2 **shall not** allow themselves to be lobbied or influenced by any other person (including another Councillor – whether a member of the Planning Committee or not) concerning such a Planning Application and its determination prior to the Planning Committee considering and determining that Planning Application. **If a Councillor acting as a “Decision Maker” is approached by applicants, objectors and others interested in the outcome of a Planning Application they should not allow themselves to be lobbied– whether for or against an application and should inform the person seeking to lobby them, that if they discuss the application with that person this will disqualify them from taking part in the decision making process on the application. Potential lobbyists should be advised to contact an appropriate officer within Development Management. The Decision Maker shall also notify the Head of Development Management of such approach to them forthwith and disclose the fact of this approach to them at the appropriate meeting of the Planning Committee.**
- 5/3.62.3 **shall not** lobby or influence or attempt to lobby or influence another Decision Maker or the Head of Development Management concerning such a Planning Application and its determination prior to the Planning Committee considering and determining that Planning Application.
- 5/3.62.4 **shall not** become involved in organised local support or opposition to such application.
- 5/3.62.5 **shall not** accept any gifts or hospitality from anyone connected with such Planning Application and take immediate steps to register any offers of gifts or hospitality refused in the Register kept for that purpose by the Solicitor to the Council.
- 5/3.62.6 **shall not** accept or indicate that they will accept any letter, pamphlet or other written material (including email and FAX) concerning such a Planning Application before it is determined by the Planning Committee. **Where a Decision Maker gratuitously receives such material they shall forthwith (a) forward it to the Head of Development Management who will arrange for the material to be referred to, if appropriate, in the Officer’s Committee Report and (b) disclose the receipt of this material by them at the appropriate meeting of the Planning Committee.**

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PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.62.7 **shall not** attend any Meeting, Briefing or Discussion concerning such Planning Application which is not arranged by or attended by the Head of Development Management or otherwise authorised in writing by the Monitoring Officer.
- 5/3.62.8 **shall not** indicate or express publicly or privately the likely decision on or the merits of/objections to, such Planning Application prior to the Planning Committee considering and determining that Planning Application. **In the event of a Decision Maker doing so they must take advice from the Monitoring Officer regarding their continuing in the role of Decision Maker.**
- 5/3.62.9 **shall not** give a commitment in relation to that Planning Application prior to its consideration at the Planning Committee. **It is of vital importance that Councillors come to meetings with an open mind and can demonstrate that they are open-minded;**
- 5/3.62.10 **shall not** bring detailed presentations with them to be read out at the meeting. **This could be perceived as indicating that the Councillor had already decided in favour of, or against an application prior to attending the meeting.** (It is recommended that Councillors make notes of points raised at the meeting as they occur for use in any presentations).
- 5/3.62.11 **shall not** vote or take any part in the Planning Committee meeting if they have not been present to hear the entire debate, including the officer's presentation concerning the application.
- 5/3.62.12 **shall not** resume their seat in the Planning Committee room or chamber (having left the room or chamber before the debate on the application began or during the debate on the application) until consideration of the application being determined at that time is concluded. **Until so concluded the Councillor must sit in the public gallery**
- 5/3.62.13 **shall not** propose, second or support a decision contrary to the Development Plan or the recommendations of the Head of Development Management without clearly identifying and articulating the planning reasons supporting that proposed decision. **Those reasons must be given prior to the vote and be recorded in the Minutes.**
- 5/3.62.14 **shall not** move a motion that the Planning Application be deferred without clearly identifying and articulating the reasons justifying such deferral. **Those reasons must be recorded in the Minutes if the planning application is deferred.**
- 5/3.62.15 **shall not** attend a meeting or vote on or take part in discussions about the application at an earlier meeting of a Town or Community Council. **In the event of a Decision Maker doing so they must take advice from the Monitoring Officer regarding their continuing in the role of Decision Maker**

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.63 If, during a Planning Committee meeting a Decision Maker concludes that (for whatever reason) they are prejudiced and unable to continue to undertake the role of “Decision Maker” in relation to a particular Planning Application, **they cannot change their role to that of “Local Representative” and address the meeting in relation to that application.** A Councillor in this situation may, however, ask the Committee to defer the application for consideration at a future meeting and must then leave the room during any subsequent discussion of the application in question by the Planning Committee.
- 5/3.64 **A Councillor who is a member of the Planning Committee and who wishes to undertake the “Local Representative” role in relation to a Planning Application which is to be determined by the Planning Committee shall comply with the provisions in this Protocol relating to the “Local Representative” in rules 5/3.67 to 5/3.73.**
- 5/3.65 A Councillor who is a member of the Planning Committee shall comply with the provisions of the **Decision Making Process** and the provisions of this Protocol relating to **“Councillor with a Personal Interest”, “Councillor with a Prejudicial Interest”** and **“Councillor with a Dispensation”** and with the **Members’ Code of Conduct** generally and is reminded in particular that if they have in respect of a Planning Application to be determined by the Planning Committee:-
- 5/3.65.1 a Personal Interest - the requirements as to disclosure;
- 5/3.65.2 a Prejudicial Interest – the need to obtain a dispensation from the Standards Committee – or otherwise be unable to undertake the role of Decision Maker.

DECISION MAKER WHO HAS EXERCISED POWER OF CALL-IN

- 5/3.66 If a specific planning application falls to be determined by the Planning Committee as a result of a Call-in request from a member of the Committee then that Councillor needs to consider carefully the role which they are able to play when the Planning Committee comes to consider and determine the application in question. **In particular where the member of the Planning Committee who has made the Call-in request:-**
- 5/3.66.1 **has couched the Call-in request in language which might indicate that they have already formed a clear and settled view as to the appropriate outcome of the application ;or**
- 5/3.66.2 **has made the Call-in request following discussions with the application /agent /objector and / or any third party (including another Councillor whether a member of the Planning Committee or not)**

The Councillor should seek advice from the Monitoring Officer regarding their continuing in the role of Decision Maker.

PART 5 - SECTION 3 – PLANNING PROTOCOL

“LOCAL REPRESENTATIVE” ROLE

OBLIGATIONS OF “LOCAL REPRESENTATIVE”

- 5/3.67 A Councillor wishing and, under this Protocol, entitled to act as a “Local Representative” at a meeting of the Planning Committee and address the Committee, make representations and answer questions must notify the Head of Development Management of such wish **“no later than 4 clear working days in advance of the meeting”**. Applicants / Agents will be informed by means of a circular letter prior to the meeting that the “Local Representative” may exercise their right to speak at the Committee meeting. Development Management **4 clear working days**
- 5/3.68 A Councillor acting as a Local Representative (whether a member of the Planning Committee or not):
- 5/3.68.1 Shall not sit with members of the Planning Committee, when attending a meeting of the Planning Committee concerning the Planning Application in question, and must wait to be called to make any representations in the public area of the room.
 - 5/3.68.2 Shall not speak to any member of the Planning Committee in relation to the Planning Application in question, either during a meeting of the committee or otherwise
 - 5/3.68.3 May, in relation to the Planning Application in question with the consent of the Chair, respond to questions from members of the Committee, the applicant or his agent and any other party allowed to speak at the meeting.
 - 5/3.68.4 Shall if the Councillor has a prejudicial interest (unless as a Councillor with a Dispensation the Councillor has a dispensation to remain) withdraw from the room, chamber or place where the meeting of the Planning Committee is taking place once they have concluded their representations and dealt with any questions asked and in any event before further consideration of the Planning Application begins.
 - 5/3.68.5 Shall not accept any gift or hospitality from anyone connected with the Planning Application in question and take immediate steps to register any offers of gifts or hospitality refused in the Register kept for that purpose by the Solicitor to the Council.
- 5/3.69 Councillors who are not on the County Planning Committee are expected to undertake training provided by the Council at regular intervals to enable them to properly carry out their role as Local Representative.
- 5/3.70 When acting in the role of “Local Representative” in relation to a specific Planning Application a Councillor can attend meetings held in the Community by lobby groups and others and participate in those meetings if the Councillor so wishes, but the Councillor must not communicate any information, views or recommendations arising from such meetings to members of the Planning Committee determining the Planning Application in question in advance of a meeting of the Planning Committee and should

PART 5 - SECTION 3 – PLANNING PROTOCOL

only express any such views as part of their formal presentations to the Planning Committee at a public meeting of the Committee called to determine the application.

When acting in the role of “Local Representative” in relation to a specific Planning Application, a Councillor who does not have a prejudicial interest may decide not to address the Planning Committee, but may submit written comments either supporting or objecting to the application prior to the meeting to the Head of Development Management. The comments will be included in the Planning Officer’s report to the Committee where it is practicable to do so and will be displayed on the Planning Portal. The applicant / agent can make a written response to the Local Representative’s written comments.

- 5/3.71 A Councillor acting as a Local Representative who requires further information on the Planning Application in question should seek such information from the relevant planning officers and not from members of the Planning Committee.

RIGHTS OF “LOCAL REPRESENTATIVE”

- 5/3.72 For the avoidance of doubt a “Local Representative” will have those rights set out in rule 5/3.33 of this Protocol under the heading of “Non-Planning Committee member role” that is to say:

5/3.72.1 Subject to the provisions in this Protocol relating to a “Councillor with a Personal Interest”, “Councillor with a Prejudicial Interest” and “Councillor with a Dispensation” and to the provisions of the Members’ Code of Conduct generally a Councillor who is a “Local Representative” will be free to :

- 5/3.72.1.1 discuss any Planning Application with the applicant /agent /objector /lobby group etc;
- 5/3.72.1.2 attend any locally organised meeting concerning the application
- 5/3.72.1.3 attend any Town or Community Council Meeting concerning the application and speak about the application (including expressing a view either for or against the application) and (if a member of the Town or Community Council) vote upon the application
- 5/3.72.1.4 relay relevant information about the application to a planning officer.
- 5/3.72.1.5 seek information / clarification about the application from a planning officer.

PROVIDED ALWAYS that in so doing the Councillor must never seek to lobby or improperly influence a Decision Maker, the Head of Development Management or a Planning Officer in relation to the determination of a Planning Application.

PART 5 - SECTION 3 – PLANNING PROTOCOL

COUNCILLORS SHOULD SEEK ADVICE

5/3.73 A Councillor in any doubt as to his position under this Protocol or Members' Code of Conduct should always seek the advice of the Monitoring Officer.

DECISION MAKING PROCESS

APPENDIX 1 TO SECTION 5/3 - DECISION MAKING MATRIX

5/3.74 Appendix 1 to Section 5/3 - the Decision Making Matrix provides in:-

- 5/3.74.1 Section 1 – Explanatory Note;
- 5/3.74.2 Table 3 – Functions to be exercised by the Planning Committee and / or Head of Development Management;
 - 5/3.74.2.1 Table 3 – Section A – Functions which cannot be the responsibility of an Authority's Executive;
 - 5/3.74.2.2 Table 3 – Section A-1 – Functions which will always be the responsibility of the Planning Committee and not the Head of Development Management;
 - 5/3.74.2.3 Table 3 – Section A-2 – “Call-In Procedure” relating to a Councillor making a request for a planning application to be determined by the Planning Committee and not by the Head of Development Management;
 - 5/3.74.2.4 Table 3 – Section A-3 – Functions which the Planning Committee and / or Head of Development Management in exercising those functions in Schedule 1 also have the power to exercise;
 - 5/3.74.2.5 Table 3 – Section B – Functions which May be the responsibility of an Authority's Executive.

DECISION MAKING BY THE PLANNING COMMITTEE

PLANNING COMMITTEE DETERMINATION PRINCIPLES

5/3.75 In considering and determining a Planning Application the Planning Committee shall:-

- 5/3.75.1 Have regard to the regulatory and quasi-judicial nature of the Committee's proceedings;
- 5/3.75.2 Disregard irrelevant considerations;
- 5/3.75.3 Act impartially, fairly and not take into account any political considerations;

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.75.4 Determine the application in accordance with the Statutory Development Plan unless material planning considerations indicate otherwise;
- 5/3.75.5 Acknowledge the emphasis in determining applications is upon a 'plan-led' system;
- 5/3.75.6 Reflect the basis of the planning system is the consideration of private proposals against the wider public interest;
- 5/3.75.7 Recognise much is often at stake in this process and opposing views are often strongly held by those involved;
- 5/3.75.8 Take into account representations made to the local planning authority as a result of consultation with interested bodies or as a result of public notice or neighbour notification;
- 5/3.75.9 Decide which representations are material to the decision to be made, and, if so, what weight to attach to them;
- 5/3.75.10 Not reach any conclusion on the merits until all the relevant facts have been considered including the officer's report and the matter appropriately debated
- 5/3.75.11 Ensure that the Public Speaking Provisions are implemented fairly.

Statutory Duties

- 5/3.76 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:

Equality Act 2010

- 5/3.77 Section 149 provides that:

- 5/3.77.1 A council must, in the exercise of its functions, have due regard to the need to:
 - 5/3.77.1.1 eliminate discrimination, harassment, victimisation and any other conduct which is prohibited by or under the Equality Act 2010;
 - 5/3.77.1.2 advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - 5/3.77.1.3 foster good relations between persons who share a protected characteristic and persons who do not share it.
- 5/3.77.2 The above powers relate to the following protected characteristics:
 - 5/3.77.2.1 age;
 - 5/3.77.2.2 disability;

PART 5 - SECTION 3 – PLANNING PROTOCOL

5/3.77.2.3	gender reassignment;
5/3.77.2.4	marriage and civil partnership;
5/3.77.2.5	pregnancy and maternity;
5/3.77.2.6	race (including colour, nationality and ethnic or national origins);
5/3.77.2.7	religion or belief;
5/3.77.2.8	sex; or
5/3.77.2.9	sexual orientation.

Human Rights

5/3.78 Section 6(1) of the Human Rights Act 5/398 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.”

Best Value

5/3.79 Section 3(1) of the Local Government Act 5/399 and Part 1 of the Local Government (Wales) Measure 2009 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.”

Crime and Order

5/3.80 Section 17(1) of the Crime and Disorder Act 5/398 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.”

DEFERRALS

5/3.81 In the event of consideration of a Planning Application being deferred at a meeting of the Planning Committee then (unless deferral of the application is agreed at the outset of the consideration of the application by the Planning Committee and no further discussion about it takes place at that meeting) only those Decision Makers present during the meeting when the application is deferred will be eligible to reconsider the application at a subsequent meeting of the Planning Committee.

RECONSIDERED APPLICATIONS

5/3.82 Where an application which has been previously considered and / or determined by the Committee, is subsequently resubmitted, the Head of Development Management in consultation with the Chair and Vice-Chair should consider whether:

PART 5 - SECTION 3 – PLANNING PROTOCOL

- (i) the application is materially the same as the previous application considered. If so only those Councillors who were present when the application was considered can take part in any subsequent consideration of the resubmitted application. Speaking rights at this meeting will be in accordance with rule 5/3.97.8.4 as follows:
- “If representations are made by a Councillor acting as a “Local Representative” / an objector/ a representative of a Town or Community Council / an applicant or their agent to a Planning Committee meeting and the matter is deferred to a subsequent meeting, then **there will be no right for any of these individuals to make a second oral representation to the reconvened meeting and any further representations shall be made in writing only. However additional comments are allowed at the discretion of the Chair in consultation with the Vice-Chair at the subsequent meeting where additional information has been received**”.
- (ii) the application is significantly different to the previous application considered. If so the application will be considered to be a new application and all members of the Planning Committee can take part in any subsequent consideration of the resubmitted application and full speaking rights will be allowed.
- (iii) the length of time between the original consideration and subsequent consideration is 6 months or more. If the length of time is 6 months or more (the timescale starts from the date of the meeting when the matter was first considered), then it will be considered to be a new application and all members of the Planning Committee can take part in any subsequent consideration of the resubmitted application and full speaking rights will be allowed.

DECISIONS CONTRARY TO OFFICER RECOMMENDATION

- 5/3.83 When members of the Planning Committee are minded to either approve or refuse a Planning Application contrary to the recommendation of the Head of Development Management (in a written report to the Committee or communicated orally at a meeting of the Committee) those members shall clearly identify and articulate the planning reasons supporting their view before a vote is taken on the application in question and those reasons shall be recorded in the Minutes of the meeting if the Planning Committee makes a decision contrary to the recommendation of the Head of Development Management and a copy of the minute containing the Committee’s reasons shall be placed on the relevant application file.
- 5/3.84 If the Planning Committee is minded to refuse or grant an application contrary to Officer recommendation, it may wish to consider whether to defer the confirmation of conditions to the next available committee. This will allow members the opportunity to obtain further planning and legal

PART 5 - SECTION 3 – PLANNING PROTOCOL

advice on the proposed reasons for acting contrary to the recommendation based on material planning considerations.

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MODIFYING PLANNING CONDITIONS.

- 5/3.85 Where members of the Planning Committee wish to add, modify or amend conditions which are recommended by the Head of Development Management those members shall clearly identify and articulate the planning reasons supporting their view before a vote is taken on the application and/or the conditions in question and those reasons shall be recorded in the Minutes of the meeting if the Planning Committee makes a decision contrary to the recommendation of the Head of Development Management **PROVIDED ALWAYS** that the wording of the final version of those conditions shall be delegated to the Head of Development Management in consultation with the Chair and Vice-Chair.
- 5/3.86 Where the Head of Development Management considers that they would be unable to defend a proposed decision of the Planning Committee on appeal they shall make this point known to the Committee before the final vote is taken. In such cases the Minutes of the meeting shall record the proposer and seconder of the motion to pass a resolution contrary to the recommendation of the Head of Development Management.

PREDETERMINATION

- 5/3.87 Where the Monitoring Officer (or their representative at a meeting of the Planning Committee meeting) considers that a member of the Planning Committee has prejudiced their position as a Decision Maker, by expressing a clear and settled view on an application before its determination by the Planning Committee, the Monitoring Officer (or their representative at a meeting of the Planning Committee) shall advise the Councillor in question and the Chair of the Committee of the effect of that Councillor continuing to play the role of a Decision Maker. The decision as to whether that Councillor shall continue to play the role of Decision Maker shall rest with that Councillor.

CORRESPONDENCE AND OTHER RELEVANT INFORMATION RECEIVED BY MEMBERS OF THE PLANNING COMMITTEE

- 5/3.88 A member of the Planning Committee may receive from time to time correspondence and other relevant information from persons or groups who have an interest in the outcome of a planning application to be determined by the Planning Committee and there will be pressure to reply. A member of the Planning Committee will occasionally receive a significant amount of unsolicited correspondence and other information on more contentious applications. The Councillor shall not reply or respond to this correspondence but instead shall refer it to the Head of Development Management. This will prevent any delay in the process. The Head of Development Management shall also:

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.88.1 If time permits, send a copy of such correspondence / other information to the applicant or their agent (provided neither is the author) so as to allow them an opportunity to respond.
- 5/3.88.2 Place a copy of all such correspondence/other information on the relevant Planning file.
- 5/3.88.3 If time permits, ensure that their report to the Planning Committee refers to such correspondence / other information; otherwise the Head of Development Management should refer to such correspondence / other information orally at the meeting of the Planning Committee giving it such prominence and weight as its relevance requires.
- 5/3.89 On occasions the new information may be so substantial as to lead to a deferment of the application. Where the Planning Application is not deferred the Chair will allow members an appropriate period of time to read the new material before proceeding with consideration of the item.
- 5/3.90 The Head of Development Management shall be responsible for reporting any correspondence or new information of relevance to the Planning Committee.

SITE INSPECTIONS

- 5/3.91 There will be no Site Inspections undertaken by the Planning Committee unless there are exceptional circumstances justifying a site inspection (that is to say it must be clearly demonstrated that a site inspection is essential to the decision making process i.e. that a proper decision cannot be made without a site inspection taking place). For the avoidance of doubt, it will be the expectation that Local Representatives will make any request for Site Inspections well in advance of the meeting:
- 5/3.91.1 as recommended in the report to the committee by the Head of Development Management in consultation with the Solicitor to the Council and the Chair and Vice-Chair of the Planning Committee; or
- 5/3.91.2 as determined by the Committee itself to deal with unresolved site specific planning issues in which case these wholly exceptional circumstances justifying the site visit shall be recorded in the minutes of the meeting at which the decision is taken.
- 5/3.91.3 as determined by the Chair and Vice-Chair of the Planning Committee on the application of one or more Councillors in whose electoral division(s) the development in question will take place or whose electoral division will be affected by the development in question subject to consultation with the Head of Development Management and the Solicitor to the Council.
- 5/3.92 Where Site Inspections are held the following Policies shall apply.

PART 5 - SECTION 3 – PLANNING PROTOCOL

POLICY 1: ARRANGEMENTS FOR HOLDING SITE INSPECTIONS

5/3.92.1 Wherever practicable Site inspections shall be arranged to take place on the same day as and immediately prior to the formal public Planning Committee meeting considering the application.

POLICY 2: ATTENDANCE AT SITE INSPECTIONS

5/3.92.2 ALL members of the Planning Committee shall be invited to attend Site Inspections together with planning officers.

5/3.92.3 Councillors acting as a “Local Representative” shall, be allowed to attend site visits to provide planning specific information to the committee. Alternatively a “Local Representative” may provide to a planning officer only in writing, additional relevant planning information relating to the site, prior to a site inspection, and the planning officer will inform those present at the site inspection of this additional information.

5/3.92.4 In exceptional circumstances the Chair may, after consultation with the Head of Development Management and the Vice-Chair, invite other council officers to attend site inspections for the sole purpose of providing information only, in relation to specialist matters, concerning the application and to answer such questions as Councillors may wish to raise.

5/3.92.5 Landowners / representative of a Town and Community Council / applicants / objectors / supporters or any other third party shall not be allowed to attend site inspections.

POLICY 3: NON ATTENDANCE BY COUNCILLORS

5/3.92.6 All members of the Planning Committee shall use their best endeavours to attend a Site Inspection where they intend to play the role of Decision Maker in relation to the Planning Application in question. A Councillor’s position to undertake the role of Decision Maker in relation to such application may be in doubt if they did not attend a relevant Site inspection (i.e. as a consequence of which the Councillor is unable to take a decision with knowledge of all relevant matters) and in that situation the Councillor shall seek the advice of the Monitoring Officer, which shall wherever practicable be obtained in writing and a copy given to the Chair and Vice-Chair of the Planning Committee prior to the commencement of the meeting in question.

5/3.92.7 Councillors who, as a result of such advice from the Monitoring Officer, conclude that they are unable to undertake the role of Decision Maker shall either move to the public gallery, or may leave the room during consideration of the application in question.

PART 5 - SECTION 3 – PLANNING PROTOCOL

POLICY 4: ACCESS TO PRIVATE LAND

5/3.92.8 Where Councillors need to enter onto private land the landowner's prior consent shall be sought by the Head of Development Management. If consent is not forthcoming, the site shall, if practicable, be viewed from the public highway.

POLICY 5: NOTIFICATION OF SITE INSPECTIONS

5/3.92.9 The applicant / objectors / and the relevant Town or Community Council shall be informed of the site inspection in advance but will not be permitted to be present during the inspection or to make any representations at the Site Inspection. However a Town or Community Council may provide to a planning officer only in writing, additional relevant planning information relating to the site, prior to a site inspection, and the planning officer will inform those present at the site inspection of this additional information.

POLICY 6: PURPOSE OF SITE INSPECTION

5/3.92.10 The sole purpose of the site inspection will be for the planning officers to explain in the context of the site, the planning issues relating to the application and for Councillors to view the site. **There shall be no discussions at the site inspection concerning the merits of the application and the site inspection will not be used as a forum for debate. No recommendations shall be made at the site inspection.**

POLICY 7: REPORT TO PLANNING COMMITTEE.

5/3.92.11 The Chair of the Planning Committee shall report if a Site Inspection has been undertaken.

REPORT ON A PLANNING APPLICATION BY THE HEAD OF DEVELOPMENT MANAGEMENT

5/3.93 All Planning Applications considered by the Planning Committee shall be the subject of a full written report by the Head of Development Management, including a detailed assessment of the proposal, including any reasonable options available to the Committee and a reasoned recommendation.

5/3.94 Any new matters that have arisen between the preparation of the report and the date of the Planning Committee considering the planning application or planning matter in question will be the subject of a written update report circulated prior to the commencement of the proceedings of the Planning Committee meeting or referred to orally at the meeting. Only exceptionally should planning officers report only orally to the Planning

PART 5 - SECTION 3 – PLANNING PROTOCOL

Committee. The update report will be filed with the signed minutes and the other reports on the Planning Application and added to the published agenda on the Council's website, where possible, prior to the meeting. All submissions should be received no later than 48 hours before the meeting of the Planning Committee, and submissions submitted less than 48 hours before the meeting will only be allowed at the discretion of the Chair and Vice-Chair of the Committee in consultation with the Head of Development Management.

SPEAKING AT PLANNING COMMITTEE MEETINGS

WHO MAY SPEAK

5/3.95 Where in relation to a specific Planning Application to be determined by the Planning Committee:

5/3.95.1 a person or body (other than a statutory consultee) has lodged an **objection** to that application and has notified the Head of Development Management (in accordance with rule 5/3.97 below) of their wish to exercise the right to speak against the application at the relevant meeting of the Planning Committee;
or

5/3.95.2 a **Town or Community Council** has indicated a wish to be heard regarding that application as a statutory consultee (in accordance with rule 5/3.97 below); or

5/3.95.3 (a) “Local Representative (s)” has / have indicated a / their wish to speak (in accordance with rule 5/3.97 below); or

5/3.95.4 The **applicant /agent** exercises the right to respond to any representations made to the Committee by an Objector, Town/Community Council or Local Representative(s)

the **PUBLIC SPEAKING PROCEDURES** set out rule 5/3.96 below shall apply.

MATTERS NOT INCLUDED

5/3.96 For the avoidance of doubt rules 5/3.95 to 5/3.97 shall not apply to, (and there shall be no right for any person to speak in relation to) the following:

5/3.96.1 enforcement cases;

5/3.96.2 applications for listed building consent;

5/3.96.3 advertisements

5/3.96.4 lawful use certificates;

5/3.96.5 appeal decisions and proposals to remove legal obligations under Section 106 of the Town & Country Planning Act;

5/3.96.6 ancient hedgerows

PART 5 - SECTION 3 – PLANNING PROTOCOL

OBTAINING THE RIGHT TO SPEAK

5/3.97 A right to speak at a meeting of the Planning Committee will only be obtained in the following situations:-

5/3.97.1 A member of the public shall be allowed to speak as an **objector** to a planning application at the Planning Committee where:

5/3.97.1.1 They have duly made, within prescribed time limits, a written objection to a planning application;

5/3.97.1.2 A member of the public will need to register an “intention to speak” when a submission is made to the Council i.e. advanced notice of an intention to speak at the Committee which will need to be confirmed at least 4 clear working days before the date of the relevant committee; and

5/3.97.1.3 Has submitted the request to be heard by the Planning Committee with Development Management at least 4 clear working days before the date of the relevant meeting of the Planning Committee. For the avoidance of doubt the relevant meeting is the first meeting of the Planning Committee where that Planning Application is on the agenda. Where additional information is submitted, additional comments can be allowed at the discretion of the Chair in consultation with the Vice-Chair at a subsequent meeting.

PROVIDED ALWAYS that :

5/3.97.1.4 Where more than one person or body (other than a statutory consultee) has lodged an objection to a planning application (as mentioned in rule 5/3.95.1 above) and the Chair of the Planning Committee in consultation with the Vice-Chair concludes that the substance of the objections by those persons are identical or similar then only one such person so objecting shall be permitted to exercise the right to speak against the application in accordance with the Public Speaking Procedures, and that person shall be the individual agreed by all the objectors who have raised the same or similar objection or in the absence of such agreement the individual who first submitted an objection in writing to Development Management.

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.97.1.5 Where in relation to the above situation the Chair of the Planning Committee in consultation with the Vice-Chair concludes that different persons or bodies have made objections which are different in substance each person or body making a different substantive objection shall be allowed to exercise the right to speak in opposition to the planning application in accordance with the Public Speaking Procedures.
- 5/3.97.1.6 Where more than one person or body (other than a statutory consultee) has submitted an objection the Head of Development Management shall, at least 3 days before the meeting of the Planning Committee in question, notify (by the most appropriate means) the persons or bodies of the conclusions of the Chair and Vice-Chair as to whether the objections are different in substance and accordingly as to those individuals and bodies who are entitled to exercise the right to speak under the Public Speaking Procedures.
- 5/3.97.2 **A Town or Community Council** (by its clerk or one of its members who can be a County Councillor (if a member of the Town or Community Council) will be allowed to speak as a statutory consultee to a Planning Application at a Planning Committee where that Council has submitted a request to be heard by the Planning Committee with Development Management at least 4 clear working days before the date of the relevant meeting of the Planning Committee. (A Town or Community Council will need to register an “intention to speak” when a submission is made to the Council i.e. advanced notice of an intention to speak at the Committee) which will need to be confirmed at least 4 clear working days before the date of the relevant committee; For the avoidance of doubt:
- 5/3.97.2.1 the relevant meeting is the first meeting of the Planning Committee where that Planning Application is on the agenda. Where additional information is submitted, additional comments can be allowed at the discretion of the Chair in consultation with the Vice-Chair at a subsequent meeting.
- 5/3.97.2.2 The County Councillor choosing to speak on behalf of a Town or Community Council cannot also be a “Local Representative”.
- 5/3.97.3 (A) Councillor(s) exercising the role of “**Local Representative(s)**” will be allowed to speak in relation to a Planning Application at a Planning Committee where that / those Councillor(s) has/have submitted a request to be heard

PART 5 - SECTION 3 – PLANNING PROTOCOL

by the Planning Committee with Development Management at least 4 clear working days before the date of the relevant meeting of the Planning Committee. Development Management 4 clear working days For the avoidance of doubt the relevant meeting is the first meeting of the Planning Committee where that Planning Application is on the agenda. Where additional information is submitted, additional comments can be allowed at the discretion of the Chair in consultation with the Vice-Chair at a subsequent meeting.

- 5/3.97.4 The **applicant/agent** will be allowed to speak (if they wish) where an objector, Town or Community Council or Local Representative has spoken.

PUBLIC SPEAKING PROCEDURES

5/3.98 Where an objector, and / or representative of a Town or Community Council, and / or (a) Councillor(s) in the role of “Local Representative” has duly complied with the above provisions enabling that individual or Council to speak at a meeting of a Planning Committee in relation to a specific Planning Application then the procedures to be followed at a meeting of the Planning Committee will be as follows.

5/3.98.1 The Chair will briefly outline these procedures that allow Councillor(s) acting as (a) “Local Representative(s)”, objectors, and representatives of Town and Community Councils the right to address the Committee, and the applicant’s/agent’s right of reply.

5/3.98.2 Prior to making their representations to the Planning Committee these individuals shall sit in the public gallery or wait outside the meeting room.

5/3.98.3 For the purposes of making their representations to the Planning Committee an individual entitled to address the Planning Committee under these provisions will be invited by the Chair to take a seat allocated for this purpose where a microphone will be available. A maximum time limit of 5 minutes will be available for each presentation which will be strictly observed save for:

(a) in applications where there are multiple speakers objecting to the application, the applicant / agent will be allowed the same aggregate time allowed to the objectors.

(b) In Planning Applications classified by the Head of Development Management as major applications a maximum time limit of 8 minutes will apply but this will be subject to (a) above (e.g. **those applications with a Welsh Office Planning Statistics (WOPS) Code 1 to 6 inclusive plus any application subject to an Environmental Impact Statement (EIA)**). when

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PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.98.4 Those making presentations cannot ask questions of one another, members of the Committee or officers but members of the Committee may ask questions of a person making a presentation to the Committee. A person making a presentation, can at the discretion of the Chair ask a question in relation to procedure only, prior to the start of their allotted speaking time.
- 5/3.98.5 Those individuals making representations under these provisions must avoid making personal or derogatory remarks, confine their presentation to relevant planning issues and shall not use plans, photographs or other display material (but may refer to plans, documents etc included in the formal application material to be considered by the Committee)
- 5/3.98.6 At the end of the each presentation, the individual making the presentation will either take a seat in the public gallery or leave the meeting room **PROVIDED ALWAYS** that a Local Representative who is also a Councillor with a Prejudicial Interest having completed their presentation to the Committee and answered any questions shall (unless they have received a dispensation from the Standards Committee to remain throughout the proceedings) immediately leave the room or chamber where the meeting is taking place.
- 5/3.98.7 The order in which individuals shall exercise their right in making representations to a Planning Committee shall be as follows:
- 5/3.98.7.1 The “Local Representative (s)”.
 - 5/3.98.7.2 Representative of Town or Community Council.
 - 5/3.98.7.3 Objector.
 - 5/3.98.7.4 Applicant or Agent.
 - 5/3.98.7.5 Head of Development Management
- PROVIDED ALWAYS** that the applicant or their agent is not obliged to exercise a right of reply to representations / objections made to the committee if they do not wish to do so.
- 5/3.98.8 For the avoidance of doubt
- 5/3.98.8.1 where an applicant or their agent does exercise the right to reply to representations / objections the time limits and other procedures referred to in (iii) above shall apply.
 - 5/3.98.8.2 An applicant or their agent has no right to make representations to a Planning Committee in the absence of presentations by the “Local Representative (s)”, and / or representatives of Town or Community Councils, and / or objector.
 - 5/3.98.8.3 In respect of proposals where there are lodged duplicate applications or several linked applications relating to the same site, these shall

PART 5 - SECTION 3 – PLANNING PROTOCOL

- be deemed to relate to one overall development and the rights to address the Committee will be interpreted accordingly.
- 5/3.98.8.4 If representations are made by a Councillor acting as a “Local Representative” / an objector/ a representative of a Town or Community Council / an applicant or their agent to a Planning Committee meeting and the matter is deferred to a subsequent meeting, then **there will be no right for any of these individuals to make a second oral representation to the reconvened meeting and any further representations shall be made in writing only. However additional comments are allowed at the discretion of the Chair in consultation with the Vice-Chair at the subsequent meeting where additional information has been received.**
- 5/3.98.8.5 A Councillor who chooses to be a “Local Representative” shall not also make representations on behalf of a Town or Community Council under the Public Speaking Procedures set out above.
- 5/3.98.8.6 A Councillor who is a “Decision Maker” shall not make representations on behalf of a Town or Community Council under the Public Speaking Procedures set out above.
- 5/3.98.8.7 Public speaking is expected to take place at the first meeting where the application is determined unless there is additional information submitted, in which case additional comments can be allowed at the discretion of the Chair in consultation with the Vice-Chair.
- 5/3.98.9 Following oral presentations by individuals under the above provisions, the Chair of the Planning Committee shall invite the Head of Development Management (if he wishes) to respond as necessary to those presentations before proceeding with his presentation of the application in the normal way **including where appropriate an update to the Committee concerning any correspondence or additional information received since publication of the Committee Agenda papers.**
- 5/3.98.10 The Head of Development Management shall keep a record of all notices received under these provisions.
- 5/3.98.11 At a meeting of the Planning Committee where representations under these provisions fall to be made in respect of a specific Planning Application every effort should be made for that application to be dealt with at the earliest opportunity.
- 5/3.98.12 The relevant plans shall be displayed as appropriate and a description of the application given before any oral representations are heard.

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.98.13 The minutes of the Planning Committee shall record the receipt of representations made under these arrangements but shall not record the substance of the representations.

Following the presentation by the Head of Development Management, members of the Committee shall debate the application and reach a decision unless it is decided to defer the application in question. Members of the Committee speaking at a Planning Committee shall not do so for longer than 5 minutes.

ROLE AND DUTIES OF THE COMMITTEE CHAIR / VICE CHAIR

ELECTION OF THE CHAIR

- 5/3.99 The Chair of the Planning Committee shall:

- 5/3.99.1 be a Councillor elected by the Committee at the first meeting of the Committee following the Annual Meeting of the Council or at an ordinary meeting in the event of a vacancy occurring between Annual Meetings.
- 5/3.99.2 hold office until:
- 5/3.99.2.1 the Annual Meeting of the County Council next following their appointment; or
 - 5/3.99.2.2 they resign from the office; or
 - 5/3.99.2.3 they are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
 - 5/3.99.2.4 they are disqualified from being a Councillor under Part III of the Local Government Act 2000; or
 - 5/3.99.2.5 a vote of no confidence in the Chair of the Planning Committee is passed by the Council following a Notice on Motion; or
 - 5/3.99.2.6 they are no longer a Councillor

Whichever shall first occur.

ELECTION OF VICE-CHAIR

- 5/3.100 The Vice-Chair of the Planning Committee shall:

- 5/3.100.1 be a Councillor elected to that position by the Planning Committee at the first meeting of the Committee following the Annual Meeting of the Council, or in the event of a vacancy occurring at the next convenient meeting of the Committee following the occurrence of the vacancy.
- 5/3.100.2 hold office until:

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.100.2.1 the first meeting of the Planning Committee which follows the next Annual Meeting of the County Council after the Councillor's appointment; or
- 5/3.100.2.2 they resign from the office; or
- 5/3.100.2.3 they are suspended from being a Councillor under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- 5/3.100.2.4 they are disqualified from being a Councillor under Part III of the Local Government Act 2000; or
- 5/3.100.2.5 in the event of a vote of no confidence in the Vice-Chair of the Planning Committee being passed by the Council following a Notice on Motion; or
- 5/3.100.2.6 they are no longer a Councillor.

Whichever shall first occur.

CHAIRING THE PLANNING COMMITTEE

5/3.101 In the absence of the Chair for the whole or part of a meeting of the Planning Committee the Vice-Chair shall preside. If the Vice-Chair shall be absent the Planning Committee shall choose one of its number present to preside as Chair for that meeting or part of it until the Chair (or Vice-Chair) returns to the meeting.

RESPONSIBILITY OF THE CHAIR PRESIDING AT A MEETING OF THE PLANNING COMMITTEE

5/3.102 The Councillor presiding as Chair at a meeting of the Planning Committee shall have the following general responsibilities:-

- 5/3.102.1 to preside over the meeting so that the Committee's business can be carried out efficiently and with proper regard to the rights of Councillors, applicants, objectors, officers and the interest of the community as a whole.
- 5/3.102.2 to ensure that the Committee meeting is properly conducted as a forum for debate on planning applications.
- 5/3.102.3 to ensure that the business of the meeting is carried out in accordance with the relevant provisions contained within the Council's Constitution, the Members' Code of Conduct, the Protocol on Member / Officer Relations, and this Protocol; and shall in particular have the following duties, obligations and responsibilities:

5/3.102.3.1 at the commencement of the meeting:

PART 5 - SECTION 3 – PLANNING PROTOCOL

- (a) to request declarations of interests from members of the Committee relating to items to be considered on the agenda;
- (b) to receive members of the Committee's requests that a record be made of their membership of Town and Community Councils where discussion has taken place of matters for the consideration of the Committee;
- (c) to receive declarations from members of the Committee that they will be acting as "Local Representative" in respect of an individual application being considered by the Committee;
- (d) to receive details of Councillors (who are not members of the Committee) who will be acting as "Local Representative" in respect of an individual application being considered by the Committee.
- (e) to receive disclosures from members of the Committee of any approaches regarding an application to be considered by the Committee from an applicant / agent / objector or any third party (including another Councillor, whether a member of the Committee or not);
- (f) to receive disclosures from members of the Committee of any attempts to lobby or influence the Councillor by any other person (including another Councillor, whether a member of the Committee or not) regarding an application to be considered by the Committee;
- (g) to receive disclosures from members of the Committee regarding any letters, pamphlets or other written material (including email and fax) which has been sent to them regarding an application to be considered by the Committee.

5/3.102.3.2 prior to the consideration of each application to call out the application number (whereupon any Councillor undertaking the role of "Local Representative" in relation to that application, and who is a member of the committee, will withdraw to the public gallery and the withdrawal of the "Local Representative" will be recorded in the minutes of the committee)

5/3.102.3.3 to amend if necessary the order in which planning applications are to be considered by the

PART 5 - SECTION 3 – PLANNING PROTOCOL

- committee in order wherever practicable that Planning Applications where members of the Planning Committee will; be undertaking the role of “Local Representative” are dealt with first.
- 5/3.102.3.4 to introduce each agenda item for discussion or for information; and
- 5/3.102.3.5 to report where a site inspection has taken place.
- 5/3.102.3.6 following the officer presentation relating to a Planning Application to facilitate the debate of Councillors and allow them to participate in the discussion in the order in which they acknowledge their wish to speak.
- 5/3.102.3.7 to consider whether an officer of the Council other than an officer of Development Management should be allowed to address the Planning Committee or answer questions and to ensure that only such officers as they consider necessary do so (it being acknowledged that it will not normally be the practise for such officers to address the Committee or answer questions)
- 5/3.102.3.8 to consider whether a representative of a statutory consultee should be allowed to address the Planning Committee or answer questions and to ensure that only such representatives as they consider necessary do so (it being acknowledged that it will not normally be the practise for such representatives to address the Committee or answer questions)
- 5/3.102.3.9 not to differentiate between Councillors (Members of the Planning Committee represent the whole community of Powys) and not to afford any preferential treatment of or special privileges to a Councillor on the basis that they are the local electoral division Councillor for the application.
- 5/3.102.3.10 to ensure so far as is reasonable that all Councillors and Officers attending the meeting shall abide by the provisions of the Council’s Constitution, the Members’ Code of Conduct, the Protocol on Member / Officer Relations, and this Protocol.
- 5/3.102.3.11 to ensure that Decision Makers refrain from making speeches and address the Committee on material ‘planning matters’ only. (The Chairperson will be expected to intervene and curtail Councillors who are making repetitious, or irrelevant statements).
- 5/3.102.3.12 where officers response to comments or questions from Councillors is required to ensure that officers are given that opportunity.

PART 5 - SECTION 3 – PLANNING PROTOCOL

5/3.102.3.13 A general discretion in relation to the protocol in consultation with the Head of Development Management and Legal Officers.

BRINGING DISCUSSIONS TO A CONCLUSION

- 5/3.103.1 at the conclusion of the discussion relating to a specific Planning Application the Chair shall not sum up but shall request those Councillors on the Planning Committee exercising the role of “Decision Maker” to move and second motions and any amendments and to vote on them (taking amendments first).
- 5/3.103.2 to ensure that votes are properly recorded and that the result is clearly communicated to the meeting so that the outcome is in no doubt.
- 5/3.103.3 to rule on all questions of procedure and process at the Committee meeting (the Chair’s decision shall be final and not open to discussion).
- 5/3.103.4 to ensure that proper regard is had by all Councillors to the advice given by officers at the Committee meeting.

THE ROLE OF OFFICERS IN SUPPORTING THE CHAIR

5/3.104 The Lead Professional, Legal and the Head of Development Management and relevant officers representing them shall provide professional advice to the Councillor presiding as Chair of a meeting of the Planning Committee in order to assist the Chair in discharging the duties of the post and in particular officers shall provide advice as follows:

- 5/3.104.1 At pre-Committee meetings so that the Chair and Vice-Chair are fully briefed on issues that may arise at meetings.
- 5/3.104.2 At any post-Committee meetings (if relevant).
- 5/3.104.3 During Committee meetings where questions are directed towards the Chair for response.

RESPECT FOR OFFICE OF CHAIR

5/3.105 All Councillors and officers shall respect the position of Chair.

DEVELOPMENT MANAGEMENT

CONDUCT OF OFFICERS

5/3.106 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute (RTPI) Code of Professional Conduct. All officers whether members of the Institute or not shall abide by the same principles namely they shall:

- 5/3.106.1 act with competence, honesty and integrity;

PART 5 - SECTION 3 – PLANNING PROTOCOL

- 5/3.106.2 fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;
- 5/3.106.3 discharge their duty to their employers, clients, colleagues and others with due care and diligence in accordance with the provisions of this Planning Code of Conduct;
- 5/3.106.4 Shall not bring the profession or the Royal Town Planning Institute into disrepute;
- 5/3.106.5 not disclose or use to the advantage of themselves or the Authority information acquired in confidence in the course of their work;
- 5/3.106.6 decline any discounts, gifts or commissions offered by any third parties in connection with their work as professional planners.

RELATIONSHIPS BETWEEN COUNCILLORS AND OFFICERS

5/3.107 In order to engender a committed professional relationship between both planning officers and Councillors each shall have respect and regard for the roles both play within the decision making process. 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. Officers must act in accordance with their professional codes 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 occasionally may be at odds with the views, opinions or decisions of the Committee or its members. Officers should also have regard to, and comply with the Protocol on Member / Officer Relations (Council Constitution Section 21).

REPORTS AND PRESENTATIONS TO THE PLANNING COMMITTEE

- 5/3.108 The report by the Head of Development Management to the Planning Committee in relation to a Planning Application shall
- 5/3.108.1 be a report based on the professional judgement of planning officers;
 - 5/3.108.2 include the observations, recommendations and comments of consultees, objectors and others including other departments of the Council;
 - 5/3.108.3 be supported by the use of still photographs, video etc., to assist Councillors in determining that application (i.e. to provide a balanced view of the site, including a 360° view of the site, contours and topography) which shall specifically include points and issues raised by the Councillor for the electoral division concerned and address and deal with the observations, recommendations, comments of other departments of the Council.

PART 5 - SECTION 3 – PLANNING PROTOCOL

5/3.109 Recommendations in such report may not always accord with the views and opinions of individuals, groups, statutory consultees etc. However, the report will always follow this Protocol. A Councillor acting as a “Decision Maker” shall respect the advice given by planning officers at the Committee or when dealing with delegated applications (See Appendix 1 - Decision Making Matrix) and shall not lobby, seek to influence, or bring pressure to bear on a planning officer for a particular recommendation or decision.

PRE-APPLICATION AND PRE-DETERMINATION DISCUSSIONS BY OFFICERS WITH APPLICANTS ETC

5/3.110 In any discussions involving the Head of Development Management or a member of their department regarding proposed development or other planning issues, it shall always be made clear at the outset, that such discussions shall not bind the local planning authority to make a particular decision, and that any views expressed are based on the officers’ provisional professional judgement but do not commit the local planning authority to any particular decision.

5/3.111 Any advice given by the Head of Development Management or a member of their department shall be consistent and based upon the Development Plan and other material considerations. Furthermore any advice given shall be impartial; the best that the officer can give in the circumstances and shall highlight any apparent problems and where appropriate discuss possible options that may be open to the developer or other party to the discussions.

PUBLIC MEETINGS RELATING TO DEVELOPMENT PROPOSALS

5/3.112 Officers involved in the processing or determining of planning applications or planning matters should not attend public meetings in connection with development proposals or submitted planning applications, unless their attendance has been authorised by the Monitoring Officer. In some situations attendance by officers at such meetings could lead to allegations of bias or prejudice in relation to a particular point of view. If authorised to attend such meetings officers should take great care to maintain impartiality, concentrate on providing factual information, listen to comments and avoid giving views on the merits or otherwise of the proposal.

GIFTS AND HOSPITALITY

5/3.113 Officers during the course of carrying out their duties may be offered hospitality from people with an interest in a planning proposal. Officers should refuse offers of gifts and hospitality of any kind. Officers must record any offers of hospitality refused in a register to be kept by the Head of Development Management.

PART 5 - SECTION 3 – PLANNING PROTOCOL

RECORD KEEPING

5/3.114 Every planning file (including one relating to an enforcement matter) shall contain an accurate account of events throughout its life including minutes and notes of meetings of all descriptions, and telephone conversations. The case officer shall visit each site to which the file relates and detailed site notes shall be maintained on file. Managers and team leaders within Development Management will undertake monitoring of record keeping on a regular basis.

DECISION MAKING BY THE HEAD OF DEVELOPMENT MANAGEMENT

APPENDIX 1 - DECISION MAKING MATRIX

5/3.115 Appendix 1 (the Decision Making Matrix) stipulates those Planning Functions which are the responsibility of the Head of Development Management.

DELEGATED DECISION MAKING

5/3.116 In determining Planning Applications under the delegated powers contained in Appendix 1 (the Decision Making Matrix) the Head of Development Management shall have regard to:

- 5/3.116.1 the Planning Committee Determination Principles; and
- 5/3.116.2 the necessity of ensuring that Councillors are made aware of such Planning Applications which relate or affect their electoral division;
 - 5/3.116.2.1 when submitted ; and
 - 5/3.115.6.2 when approved or refused (together with the officer's report).
- 5/3.116.3 the requirement for the relevant line manager to countersign case officer reports on delegated decisions.

PLANNING APPLICATIONS SUBMITTED BY OFFICERS

5/3.117 Proposals for development by officers of Development Management and their relatives and close friends can easily give rise to suspicions of impropriety. It is vital that they are handled in a way that gives no grounds for accusations of favouritism.

5/3.118 Any member of staff within Development Management shall not prepare plans or act as agent for any person or body (including themselves, members of their own family) pursuing a planning application or planning

PART 5 - SECTION 3 – PLANNING PROTOCOL

matter with the Council. If such an officer submits their own application, they shall take no part in the processing of that application and shall appoint an agent. Such proposals shall be reported to the Planning Committee for consideration and determination and shall not be dealt with by the Development Management officers. The Monitoring Officer must confirm in the committee report that these requirements have been complied with.

- 5/3.119 An officer (not within Development Management) shall not prepare plans or act as agent for any person or body other than themselves or close members of their family (i.e. spouses, partners, parents, grandparents, children, brothers or sisters) and in all cases the Head of the Planning Service shall be made aware of the officer's involvement and the matter shall be referred to the Planning Committee for consideration and determination.
- 5/3.120 A Planning Application by an officer within Development Management must be processed by officers of a different Planning Office to that where the applicant officer works before being considered by the Planning Committee for determination.
- 5/3.121 A Planning Application submitted to the Council by the Chief Executive, Executive Director, Head of Service or any other officer who has regular contact with Development Management shall be determined by the Planning Committee.

PLANNING APPEALS

PROCEDURE FOR DEALING WITH APPEALS

- 5/3.122 The Lead Professional, Legal is responsible for determining who should present a case at appeal and which witnesses should be called on behalf of the planning authority and generally for the care and conduct of the Appeal. They shall consult with the Head of Development Management, Chair of the Planning Committee, Portfolio Holder and relevant local Councillors as appropriate.
- 5/3.123 Officers of Legal and Development Management will organise the Council's case and generally the latter will appear as witnesses at planning inquiries and other proceedings on behalf of the Council. In some circumstances it may be necessary to appoint consultants to appear for the Council, particularly where specialist support is necessary.
- 5/3.124 In giving evidence Development Management officers will present the best possible case on behalf of the Council whilst also complying with the RTPI Code of Professional Conduct.
- 5/3.125 Where a Planning Committee decision contrary to officer recommendation is subject to an appeal and officers have previously made known to the

PART 5 - SECTION 3 – PLANNING PROTOCOL

Planning Committee that they are unable to defend such decisions, the Head of Development Management shall report notice of the appeal to the next planning meeting of the Planning Committee.

5/3.126 Where a Planning Committee decision contrary to the recommendation of the Head of Development Management is the subject of an appeal and officers have previously made known to the Committee that they are unable to defend such decisions, members of the Planning Committee who supported the decision may be called to present evidence at the appeal if deemed necessary by the Lead Professional, Legal. Councillors shall be provided with support in preparing their submissions for an Inquiry by the Council's own officers or by consultants. The Lead Professional, Legal shall provide a level of professional support for Councillors who are required to present an appeal to a Planning Inquiry.

5/3.127 The Head of Development Management shall regularly report on appeal decisions

5/3.128 The Head of Development Management will advise the Planning Committee of the outcome of enforcement decisions.

TRAINING

Training of Planning Committee Councillors

5/3.129 The Council shall ensure that members of the Planning Committee satisfactorily complete Induction Training before first serving on the Planning Committee and undertake from time to time additional / refresher training in accordance with a training programme agreed by the Council.

5/3.130 Attendance records for planning training events shall be monitored. A 6 monthly report shall be presented to the Council's Standards Committee and the County Council advising of any non-attendances by a member of the Planning Committee who fails to attend the training sessions shall not be permitted to sit on the Planning Committee, until such training has been completed. A new member of the Council shall undertake a training session before they are permitted to sit on the Planning Committee.

Training of other Councillors

5/3.131 Appropriate training for Councillors who do not sit on the Planning Committee will be arranged at regular intervals so as to enable them to properly discharge the role of "Local Representative".

REVIEW OF DECISIONS

5/3.132 The Audit Commission's Report, "Building in Quality", recommended that elected Councillors should visit a sample of implemented planning

PART 5 - SECTION 3 – PLANNING PROTOCOL

permissions to assess the quality of decisions. This can improve the quality and consistency of decision making and help with reviews of planning policy.

5/3.133 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.

5/3.134 Attendance at the review site visits shall be restricted to members of the committee.

MEMBERS' CODE OF CONDUCT

5/3.135 The Members' Code of Conduct in force for the time being (as supplemented by this Protocol), **must be followed at all times**.

**Appendix 1 to Section 5/3 – Planning Protocol
Decision Making Matrix**

AMENDED TO REFLECT THE COUNCIL'S CONSTITUTION.

SECTION 1.

1. In this part reference to “the Regulations” is a reference to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Regulations 2007) (as amended) and a reference to a regulation or schedule is a reference to a regulation or schedule within the Regulations.
2. The tables below detail the responsibility for exercising the Authority’s functions namely:-

Table 3	Functions to be exercised by the Planning Committee
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3. Most of the tables have more than one section and columns but some only have one section and / or no columns; each section either lists in a 3 column format a collection of functions or simply sets out verbatim provisions contained within the regulation and/or schedule referred to in the section heading.
4. The numbering and/or lettering proceeding each function in Column (1) of the tables (or in the body of a table without columns) corresponds to the numbering and/or lettering relating to that function contained in the regulation and/or schedule referred to in the section heading.
5. Where functions have been delegated to an Executive Member, Executive Committee, Ordinary Committee, Ordinary Sub-Committee or Officer details will be contained within the relevant Table (either in column (3) or in a separate section of the Table) indicating whether the delegation is by the full Council, the Executive Leader, the Executive, an Executive Committee, an ordinary Committee or an ordinary Sub-Committee.
6. A Table will indicate (either in column (3) or in a separate section of the Table) whether there is any condition or limitation to the exercise of the function or the grant of any delegation.

TABLE 3

**FUNCTIONS TO BE EXERCISED BY THE PLANNING COMMITTEE AND / OR
HEAD OF DEVELOPMENT MANAGEMENT**

SECTION A

- A1 The functions set out below are, by virtue of Regulation 3 of, and Schedule 1 to, the Regulations Functions which CANNOT be the responsibility of an Authority’s Executive**
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PART 5 - SECTION 3 – PLANNING PROTOCOL

- A2** The Council has decided that those functions in Schedule 1 set out below should be exercised by the Planning Committee. In many instances these functions have been delegated to the Head of Development Management to the extent indicated in column (3) subject to the provisions in Sections A-1, A-2 and A-3 below.
- A3** Section A-1 below sets out those circumstances when the functions will always be the responsibility of the Planning Committee and not the Head of Development Management.
- A4** Section A-2 sets out the “Call-In Procedure” relating to a Councillor making a request for a planning application to be determined by the Planning Committee and not by the Head of Development Management.
- A5** Section A-3 sets out relevant extracts of Regulation 3 which expands the extent of “functions” in this connection to include imposing conditions, enforcement, amending, modifying or varying approvals, consents, permissions etc.
- A6** The Council’s Planning Protocol adopted on 24th April, 2008 deals with the discharge of the Authority’s Town and Country Planning Functions in detail and is contained in Part 5, Section 5 of this Constitution.

Schedule 1.

(1) Function	(2) Provision of Act or Statutory Instrument	(3) Delegation of Function and / or Conditions and Limitations
A. Functions relating to town and country planning and development control		
1. Power to determine applications for planning permission. [This includes an assessment of need for an Environmental Impact Assessment].	Sections 70(1)(a) and (b) 71 and 72 of the Town and Country Planning Act 1990 (c.8).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
2. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
3. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
4. Power to decline to determine application for planning permission.	Section 70A of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
5. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990 and Articles 8, 10 to 13, 15 to 22 and 25 and 26 of the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) and directions made thereunder.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
6. Power to determine applications for planning permission made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992 (S.I. 1992/1492)	
7. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
<p>8. Power to enter into planning obligation regulating development or use of land.</p> <p>[This includes:</p> <p>(i) Power to enter into planning obligations</p> <p>(ii) Power to determine applications for the discharge or variation of planning obligations.</p> <p>(iii) Power to agree to the discharge or variation of planning obligations].</p>	<p>Section 106 of the Town and Country Planning Act 1990</p>	<p>Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.</p> <p>PROVIDED ALWAYS that when exercising this power the Head of Development Management (and the Planning Committee in the event of that committee exercising that power) shall stipulate the time limit within which such agreement shall be concluded and in the event that it is not concluded within such time limit, the Head of Development Management (or as the case may be the Planning Committee) shall refuse any related Planning Application unless satisfied that the delay is unavoidable and that there is sufficient evidence for them / the committee to conclude that the matter will be concluded within a further reasonable time period whereupon a fresh time limit shall be imposed.</p> <p>The Head of Development Management shall make an annual report to the Planning Committee regarding the number and type of applications/agreements dealt with under this delegation.</p>
<p>9. Power to issue a certificate of existing or proposed lawful use or development.</p>	<p>Sections 191(4) and 192(2) of the Town and Country Planning Act 1990</p>	<p>Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.</p>

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
10. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
11. Power to grant consent for the display of advertisements.	Section 220 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
12. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
13. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.	
14. Power to serve and / or retract a planning contravention notice, breach of condition notice or stop notice.	Sections 171C, 187A and 183(1) of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below; and PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Local Representative for the electoral division affected so that the Councillor may be fully appraised and have a proper opportunity of making their views known.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
15. Power to issue and / or retract an enforcement notice.	Section 172 of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below. PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Councillor for the electoral division affected so that the Local Representative may be fully appraised and have a proper opportunity of making their views known.
16. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below. PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Local Representative for the electoral division affected so that the Councillor may be fully appraised and have a proper opportunity of making their views known.
17. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990 (c. 10).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
18. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 (c. 25) and paragraph 6(5) of Schedule 14 to that Act.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below. PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Councillor for the electoral division affected so that the Local Representative may be fully appraised and have a proper opportunity of making their views known.
19. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
20. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
21. Power to determine applications for conservation area consent.	Section 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as applied by section 74(3) of that Act	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
22. Duties relating to applications for listed building consent and conservation area consent.	Section 13(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations 3 to 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and paragraph 127 of the Welsh Office circular 61/96: Planning and the Historic Environment; Historic Buildings and Conservation Areas.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
23. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
24. Power to issue a listed building enforcement notice.	Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below. PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Councillor for the electoral division affected so that the Local Representative may be fully apprised and have a proper opportunity of making their views known.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
25. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.	
26. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below. PROVIDED ALWAYS that the Head of Development Management before and during the exercise of this power shall have appropriate discussions with the Councillor for the electoral division affected so that the Local Representative may be fully appraised and have a proper opportunity of making their views known.
27. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
28. Power related to mineral working.	Schedule 9 of the Town and Country Planning Act 1990.	
29. Power related to footpaths and bridleways.	Section 257 of the Town and Country Planning Act 1990.	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
30. Power as to certification of appropriate alternative development.	Section 17 of the Land Compensation Act 1961 (c.33).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.

PART 5 - SECTION 3 – PLANNING PROTOCOL

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
31. Duties in relation to purchase notices.	Sections 137-144 of the Town and Country Planning Act 1990.	
32. Powers related to blight notices.	Sections 149-171 of the Town and Country Planning Act 1990.	
I. Miscellaneous Functions.		
3. Powers relating to the preservation of trees	Sections 197 to 214D of the Town and Country Planning Act 1990 and the Town and Country Planning (Trees) Regulations 1999 (S.I. 1999/1892).	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.
4. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations 1997 (S.I. 1997/1160)	Delegated to Head of Development Management subject to the provisions contained in Sections A-1 and A-2 below.

SECTION A-1

A-1.1 This Section A-1 sets out those circumstances when the functions will always be the responsibility of the Planning Committee and not the Head of Development Management.

A-1.2 The Head of Development Management will not exercise their delegated responsibility for the functions listed in Part 1 above in the following circumstances whereupon the function will be dealt with by the Planning Committee

1. The Head of Development Management considers that the Planning Function should be dealt with by the Planning Committee and not by him / herself.
2. A Councillor registers a request (in accordance with Part 3 below) that a Planning Application be referred to the Planning Committee for

PART 5 - SECTION 3 – PLANNING PROTOCOL

decision and not determined by the Head of Development Management;

3. The Planning Application in question constitutes a material departure from the Development Plan and the view of the Head of Development Management is that the Planning Application should be approved;
4. The Planning Application is made by or on behalf of the County Council or relates to or affects Council land or premises (whether or not actually occupied by the Council) ;
5. The Planning Application is required to be accompanied by an Environmental Statement under the EIA Regulations;
6. The Planning Application is submitted by or on behalf of any member of the Council or any member of staff employed in Development Management, the Chief Executive, Strategic Directors and Directors, Heads of Service, or officers who are in regular contact with Development Management.

SECTION A-2

A-2.1 This Section A-2 sets out the “Call-In Procedure” relating to a Councillor making a request for a planning application to be determined by the Planning Committee and not by the Head of Development Management.

1. Subject to paragraph 3 below, a Councillor (whether a member of the Planning Committee or not) may, in respect of a Planning Application in their electoral divisions, or which affect their electoral division, request in writing (by letter, email or fax), in accordance with paragraph 2 below, that such Planning Application which ordinarily under Part 1 of this Decision Making Matrix would be determined by the Head of Development Management be determined by the Planning Committee;
2. A written request (by letter, email or fax) by a County Councillor for a Planning Application within their Electoral Division or which affects their electoral division to be considered by the Planning Committee shall be sent or forwarded to the Head of Development Management so as to be received by them within the period of 21 consecutive days from the registration of the Planning Application and such request must set out the planning grounds justifying the request;
3. A Councillor shall not be entitled to make a request under paragraph 1 above in relation to re-submitted applications where no substantial change has been made to an original application which has been refused.

PART 5 - SECTION 3 – PLANNING PROTOCOL

A Councillor who has exercised the “Call-in” of a Planning Application may request that the “Call-in” be withdrawn by giving notice in writing (Email / fax / letter) “no later than 4 clear working days in advance of the meeting”.

4. The decision of the Chair of the Planning Committee as to whether a request complies with this procedure shall be final.
5. A Councillor exercising the power of “Call-in” shall comply with the provisions of this Protocol relating to “Councillor with a Personal Interest”, “Councillor with a Prejudicial Interest” and “Councillor with a Dispensation” and with the Members’ Code of Conduct generally.
6. Members of the Planning Committee are cautioned that if, in exercising the power of Call-in:
 - (i) they express an opinion for or against the Planning Application, they will only be able to undertake the role of “Local Representative”; and
 - (ii) if they have previously discussed the application with applicant and / or agent and / or objector and / or third party they will only be able to undertake the role of Local Representative.

In these situations the advice of the Monitoring Officer should be sought.

	When a Councillor requests determination by the Planning Committee and is unable to attend the meeting to speak thereon, consideration of a letter from that Councillor relating to the Planning Application will be allowed as an alternative to an oral presentation made by that Councillor.
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SECTION A-3

A-3.1 Under Regulation 3, the Planning Committee and / or Head of Development Management in exercising those functions in Schedule 1 detailed above also have the power to exercise those “functions” set out below.

Regulation 3.

3(2)	The functions of:
(a)	imposing any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted:
(i)	in the exercise of a function specified in column (1) above; or
(ii)	otherwise than by an executive of the authority, in the

PART 5 - SECTION 3 – PLANNING PROTOCOL

	exercise of any function under a local Act; or
(b)	determining any other terms to which any such approval, consent, licence, permission or registration is subject.
3(3)	The function of determining whether, and in what manner, to enforce:
a)	any failure to comply with an approval, consent, licence, permission or registration granted in the exercise of a function specified in column (1) above.
(b)	any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or
(c)	any other contravention in relation to a matter with regard to which the function of determining an application for approval, consent, licence, permission or registration would not be the responsibility of an executive of the authority.
3(4)	The function of:
(a)	amending, modifying or varying any such approval, consent, licence, permission or registration granted or any condition, limitation, restriction or term as mentioned in paragraph (2) to which it is subject; or
(b)	revoking any such approval, consent, licence, permission or registration.
3(5)	The functions of making any scheme authorised or required by regulations under section 18 of the Local Government and Housing Act 1989 (schemes for basic, attendance and special responsibility allowances for local authority members), or of amending, revoking or replacing any such scheme.
3(6)	The functions of determining:
(d)	whether a charge should be made for any approval, consent, licence, permit or registration the issue of which is not the responsibility of an executive of the authority; and
e)	where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge.

SECTION B

B1 The functions set out below are, by virtue of Regulation 4 of, and Schedule 2 to, the Regulations Functions which MAY be the responsibility of an Authority's Executive

PART 5 - SECTION 3 – PLANNING PROTOCOL

B2 The Council has decided that those functions in Schedule 2 set out below should be exercised by the Planning Committee.

Schedule 2.

(1)	(2)	(3)
Function	Provision of Act or Statutory Instrument	Delegation of Function and / or Conditions and Limitations
18. Any of the following functions in respect of highways:		
(e) exercising functions under section 34 of the Wildlife and Countryside Act 1981 (limestone pavement orders);	Section 34 of the Wildlife and Countryside Act 1981 (limestone pavement orders) (c.69) as amended by paragraph 83 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16); by Section 27AA of the 1981 Act Section 34 has effect as if references to Natural England were references to the Countryside Council for Wales.	