

# REPORT OF THE CORPORATE DIRECTOR – COMMUNITIES

## REVIEW AND UPDATE OF THE LPAs PLANNING CODE OF PRACTICE

### Background

The Planning Code of Practice has not been updated since the Local Authorities (Model Code of Conduct) (Wales) Order 2008 [here](#).

The main aims of the Planning Code of Practice is to ensure that there are no grounds for suggesting that a decision by the Council has been biased, partial or unfounded and that all parties understand the planning process and procedures.

The Code of Practice provides guidance to elected Members, Officers, the general public, applicants and developers on the planning process.

The document has been updated in draft and a workshop session is planned with Members before the DC Committee meeting on 13<sup>th</sup> April, 2017 to consider and discuss the changes to the document.

The updated Planning Code of Practice follows:

- The Member Workshop and reporting of the draft Planning Committee Protocol produced by the Welsh Local Government Association in April/May 2016;
- the release of a Development Management Manual by the Welsh Government ([here](#)); and,
- the Planning Advisory Service's (PAS) publication 'Probity in Planning' ([here](#)), which clarifies how members can get involved in planning discussions on applications, on behalf of their communities in a fair, impartial and transparent way.

Once adopted, the document will be updated on an annual basis or as and when new and relevant national regulations or guidelines emerge.

### Recommendation

- (1) That Members note the content of this report and approve the LPAs updated Planning Code of Practice (April 2017) (Appendix 1), subject to any suggestions made at the member workshop.

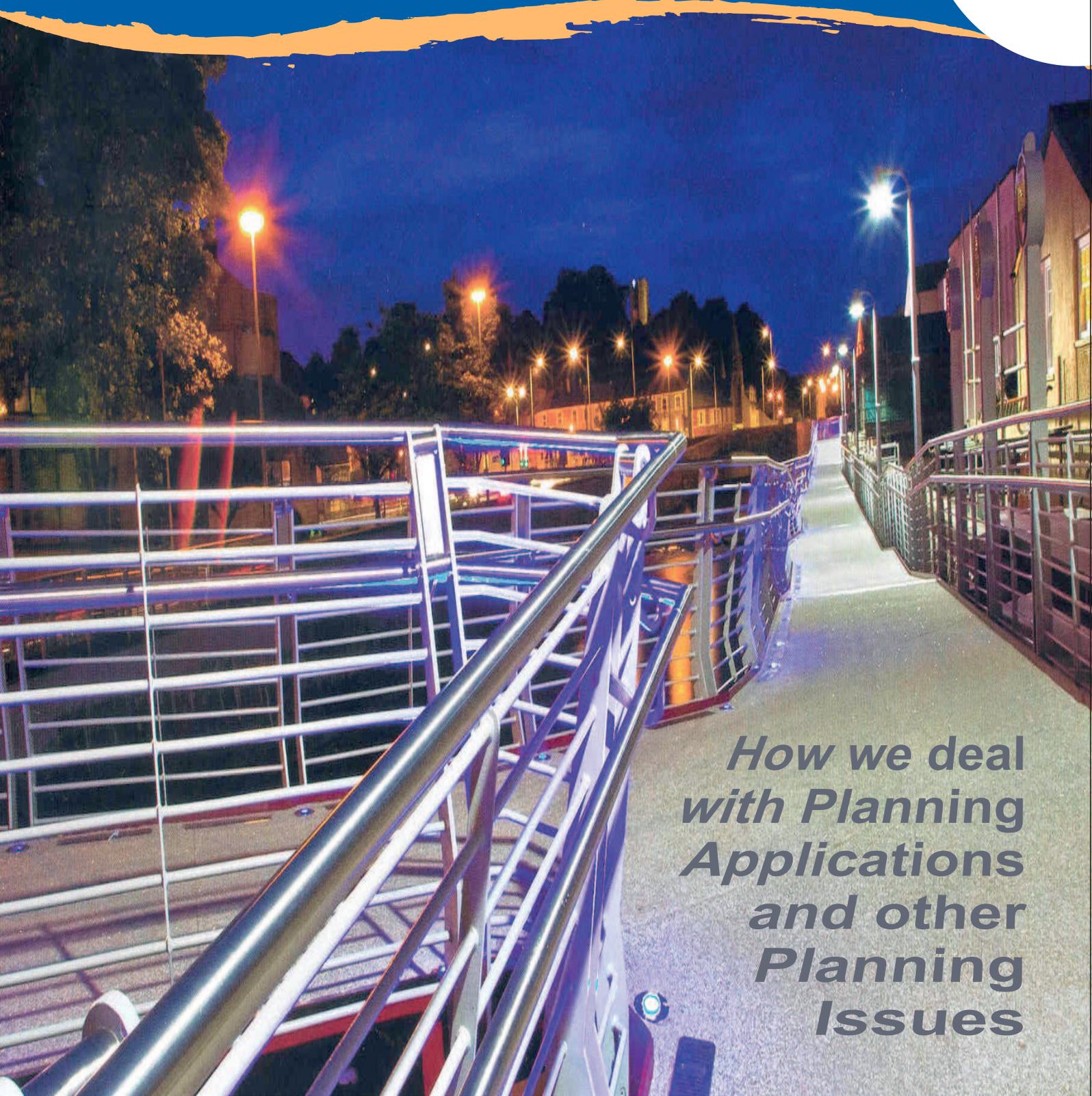
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**CORPORATE DIRECTOR COMMUNITIES**

### Background Papers

None

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# Planning Code of Practice



*How we deal  
with Planning  
Applications  
and other  
Planning  
Issues*

Bridgend County Borough Council

Updated April 2017

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## 1. INTRODUCTION

The Planning system involves taking decisions about the use and development of land in the wider public interest having regard to the Development Plan, national Planning Guidance and other material considerations. Planning can be highly contentious because its decisions affect the daily lives of individuals, landowners and developers.

In considering planning applications and reaching planning decisions the requirements of the individual, whether the applicant or a neighbour, have to be balanced against the broader public interest.

It is important that the process is open and transparent. The main aim of this Code of Practice is to ensure that planning decisions have been made in an unbiased, impartial basis and that all parties understand the process.

Members are advised to read all the guidance material provided by the Council (BCBC Website) including the Local Authorities (Model Code of Conduct) (Wales) Order 2008 (the Code of Conduct) [here](#), the Planning Committee Protocol produced by the Welsh Local Government Association and the WG Development Management Manual [here](#).

In addition, the Planning Advisory Service (PAS) published '*Probity in Planning*' ([here](#)), which clarifies how members can get involved in planning discussions on applications, on behalf of their communities in a fair, impartial and transparent way. Members must act in accordance with the provisions of the Code of Conduct at every stage of the planning process.

This Code of Practice provides guidance to elected Members, Officers, the general public, applicants and developers on the planning process.

The document will be updated on an annual basis or as and when new and relevant national regulations or guidelines emerge.

## **2. ROLE OF MEMBERS AND OFFICERS**

### **2.1 General**

#### **2.1.1 Differing Roles**

Councillors and Officers have different but complementary roles. Both serve the public but Councillors are responsible to the electorate, whilst Officers are responsible to the Council as a whole.

Officers advise Councillors and the Council and carry out the Council's work. They are employed by the Council, not individual Councillors, and Member's instructions may only be given to Officers through a decision of the Council, its Executive or a Council Committee.

#### **2.1.2 Relationship and Trust**

It is important that a good relationship exists between Councillors and Officers and that this is based on mutual trust and understanding of each other's positions. This relationship and trust must never be abused or compromised.

### **2.2 Role of Officers**

The Officer's function is to advise and assist Councillors in the formulation of planning policies in the determination of planning applications. Officers should:-

- Provide impartial and professional advice.
- Make sure that all the information necessary for the decision to be made is given.
- Provide a clear and accurate analysis of the issues.
- Set applications against the broader Development Plan policies and all other material considerations.
- Give a clear recommendation.
- Carry out the decisions made by Councillors in Committee or through the delegated authority of the Corporate Director Communities.
- Update Members on new legislation and guidance.

## **2.3 Role of Councillors**

### **2.3.1 Upholding Policy**

The full Council is responsible for setting the Council's formal planning policy framework through the Development Plan. As a general principle there is an expectation that Councillors will uphold the Council's planning policies.

### **2.3.2 Planning consideration**

It falls to the Development Control Committee to determine planning and related applications within the context of these planning policies. When Councillors come to make a decision they must:-

- Be clear as to whether or not they have an interest which needs to be declared.
- Act fairly and openly.
- Approach each application with an open mind.
- Carefully weigh up all relevant issues.
- Determine each application on its own merits.
- Avoid giving the impression that the Member has made her / his mind up prior to the application being determined.
- Ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

### **2.3.3 Ward Member Views**

Where a planning application relates to an elected member's ward, the views of the local Member are important to the Officers and to the Chair and Members of the Development Control Committee.

Local Members can be approached by applicants and by objectors and should consider whether their interests have been prejudiced and should disclose this to the Planning Case Officer and Principal Legal Officer at the Development Control Committee. Whilst Members have a responsibility to their constituents, including those who did not vote for them, their overriding duty is to the whole County.

### **2.3.4 Development Control Committee**

Members should not become too closely identified with special interest groups if they wish to vote in the Development Control Committee.

At a meeting of the DC Committee Members with a personal and prejudicial interest in a particular application must declare that interest in accordance with the provisions of the Code of Conduct and leave the meeting when the item in which they have a personal and prejudicial interest is discussed.

However, under the provisions of the Code of Conduct a member with a personal and prejudicial interest can speak to the extent that a member of the public can speak but will then have to leave the Chamber as soon as they have finished speaking and before the debate and vote. Any member who wishes to exercise a right to speak in these circumstances should contact the Committee Chair and the Legal Officer in advance of the meeting.

Where a DC Committee Member has declared a non-prejudicial interest in an item on the agenda they can then take part in the debate and vote.

Where wards have more than one elected member, only one can sit on the planning committee in order to allow at least one of the ward members to perform the representative role for local community interests.

## **2.4 Member/Officer Contact**

### **2.4.1 Understanding roles**

The Officer/Member relationship is extremely important for good decision making and the delivery of an effective planning service.

The mutual understanding of their respective roles and respect for each other's position is vital for good relations.

### **2.4.2 Contact & Appointments**

In making enquiries regarding individual applications Members should make contact with the Case Officer or Development and Building Control Manager or the Team Leader and make an appointment if necessary.

Members should not seek advice or information from other Officers. This is in the interests of efficiency and to avoid duplication of effort and confusion.

### **2.4.3 Assistance from Officers**

Officers will provide every reasonable help to Members in the carrying out of their duties. Meetings between Officers and Members may sometimes be helpful, but are only likely to be of value if prior arrangements have been made. This allows the Officer to have all relevant documents available at the meeting. Prior arrangements may be made by emailing the relevant Officer or the general Planning email address ([planning@bridgend.gov.uk](mailto:planning@bridgend.gov.uk)). The Members' room can be utilised and other suitable rooms, preferably with access to a computer, can be made available by mutual agreement if privacy is required.

### **2.4.4 Non-interference**

It is acknowledged that Members and Officers may well have differing views on a proposal but Members should not influence, interfere with or put pressure on Officers to make a particular recommendation.

### **3. TRAINING**

#### **3.1 Undertaking training**

Members of the Development Control Committee must receive training before being able to speak or vote at a Development Control Committee meeting. The training will also be offered to all Members.

#### **3.2 Core/Fundamental training**

Core Training will consist of sessions covering new legislation, planning procedures, the Development Plans, Supplementary Planning Guidance, Design Guides, material planning considerations, probity and the application of this Code of Practice.

#### **3.3 Other training**

There will be other training arranged by Officers in consultation with Members and other departments of the Council in the form of additional sessions, seminars and workshops on topical and specific issues to keep Members up to date on new procedures, advice and guidance.

#### **3.4 Attendance & Monitoring**

Members of the Development Control Committee should attend the core training sessions.

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## **4. REGISTRATION AND DECLARATION OF INTERESTS**

### **4.1 Code of Conduct**

Councillors should follow scrupulously the Council's Constitution and the **Code of Conduct** ([here](#)) in relation to registration and declaration of interests and, if an interest is declared, in deciding whether the Councillor should participate in the consideration of an application. Not only should impropriety be avoided but also any appearance or grounds for suspicion of improper conduct.

If a Member considers he/she may have a personal interest they should consult the Monitoring Officer or a Senior Officer of the Legal & Regulatory Services Officer's Department for advice on their position.

### **4.2 Relationship with Third Parties**

If a Member of the Development Control Committee has had such a significant personal involvement with an applicant, agent, landowner or other interested party whether or not in connection with the particular matter under consideration by the Committee, which could possibly lead to the reasonable suspicion by a member of the public that there may be any possibility that the involvement could affect the Councillor's judgement in any way, then the Councillor should consider carefully whether the involvement amounts to a personal and prejudicial interest, which would debar him/her from participation in the decision-making process.

### **4.3 Personal and Prejudicial Interests**

#### **4.3.1 Disclosure**

The principles about the disclosure of interests should be applied, not only to formal meetings, but also to any of a Councillor's dealings with Council Officers, or with other Councillors. Where a Councillor has a personal and prejudicial interest, as defined by the Code, it must always be declared. It does not necessarily follow that the Councillor is debarred from participation in the discussion.

The responsibility for declaring an interest lies with the Councillor, but the Monitoring Officer is there to advise. If there is any doubt in a Councillor's mind, he/she should seek early advice from the Monitoring Officer or other Senior Officers of the Legal & Regulatory Services on their position. Councillors should err on the side of declaring an interest when they are not sure.

#### **4.3.2 Interests**

Members who have substantial property, professional or other interests relating to the planning function which would prevent them from voting on a regular basis, should avoid serving on the Development Control Committee.

#### **4.3.3 Action when interest declared**

Where a Member has decided he/she has a personal or prejudicial interest making it inappropriate for that Member to be involved in the processing and determination of a planning application in his/her ward, such a Member may arrange for another Member to act as local Member instead.

In such a situation the local Member should inform the Monitoring Officer and the Case Officer of the arrangement made and should take no further part in the processing and determination of the planning application other than referring any representations or communications received to the Member who is acting as local Member.

However, the use of substitute members is not allowed at DC Committee meetings.

#### **4.4 Declaration of Interest**

When declaring an interest at Committee, this should be done at the beginning of the meeting. Councillors should be clear and specific in identifying the item on the agenda in which they have an interest, and the nature of that interest.

#### **4.5 Register**

A register of Members' interests is maintained by the Council's Monitoring Officer. It is available for public inspection. Each Councillor has a responsibility to provide the Monitoring Officer with up to date written details of relevant interests.

#### **4.6 Dual Community/Town Council Membership**

##### **4.6.1 Interest**

Membership of a Town/Community Council which has expressed a view on a planning matter does not in itself mean that the Councillor cannot take part in the determination of the matter when it comes before the Development Control Committee provided that the Councillor has kept an open mind and not committed himself/herself to a final view on the matter until all the arguments for and against have been aired at Committee.

If the Councillor has been a party to the decision making process of a planning application at a Town/Community Council meeting then they should declare an interest at the Development Control Committee and not take part in the decision making process.

Members should always declare a personal interest where they are a member of a Town/Community Council even if they did not take part in the decision making process at that Council.

##### **4.6.2 Town & Community Applications**

Where an application submitted by a Community or Town Council is being considered then a Member of that Council may not vote on the proposal to determine the application.

## **5. LOBBYING**

### **5.1 Lobbying**

Lobbying or otherwise seeking to influence a decision is an accepted part of the planning process. The Nolan Committee's Third Report states *"it is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective way that this can be done is via the local elected representatives, the Councillors themselves"*. However unless care and common sense is exercised by all parties, the impartiality and integrity of a Councillor that has been lobbied can be called into question.

The Councillor should take care not to make any comments in such discussions that might lead anyone to think that they had taken a firm view on the application.

There is no clear definition of lobbying and Members will need to take a personal view of what it amounts to. For the purposes of this document lobbying is defined as any involvement or approach by an interested party where that party is advocating a certain outcome. This can include instances where a Member is copied into correspondence by an interested party or another Member.

If a Development Control Committee Member is approached, the most prudent course of action is to not offer any indication of their views but simply listen to the case that is presented to them and advise on procedural matters only.

Sometimes planning applications generate strong feelings in the community resulting in public meetings. Members should consider whether it is appropriate to attend public meetings as this may be interpreted as adopting a position for/against a proposal. If they do attend they should publicly record that they are in attendance to hear the debate only and will not come to a final decision until they have heard all the evidence.

This advice applies to the Pre-Application Consultation process implemented by the Welsh Government in March 2016 (see Section 8.2 below).

### **5.2 Decision on Merits**

Councillors are under an obligation to determine matters on their merits. That means that they should not take a firm view on a planning matter before receiving and reading any Officer's report or receiving any new information reported to the Committee.

Whilst Members of the Committee may form an initial view or opinion, and indicate their view that an application is contrary to policy, they should not openly declare which way they intend to vote in advance of the Development Control Committee meeting.

To avoid compromising their position before they have received all the relevant information, Councillors are advised that they should:-

- Refer applicants / developers who approach them for planning or procedural advice to the case Officer.
- Avoid making it known in advance whether they support or oppose the proposal.
- Avoid campaigning actively in support of a particular outcome.

- Not put pressure on Officers to make a particular recommendation in their report.
- Direct lobbyists or objectors to the case Officer, who will include reference to their opinions where relevant in their report.
- Make it quite clear that they will not make any final decision on the proposal until they have received full information at the Development Control Committee.

### **5.3 Contact**

Members should declare significant contact with applicants and objectors. Significant contact is where a Member has been contacted (either orally or in writing) and believes his/her interests have been prejudiced. Members should always remember that the test as to whether their interests have been prejudiced is not just what they consider to be the case but what a reasonable bystander who is aware of all the facts of the contact would consider to be the case.

### **5.4 Ward Councillors**

Members must advise the Ward Councillor as a courtesy in cases where they are seeking to be involved in a development proposal or enforcement issue outside of their own Ward. It is accepted that where a planning application has a significant effect on another ward the Member(s) for that ward is entitled to become involved in the development proposal.

### **5.5 Monitoring Officer**

Councillors should in general, avoid organising support for or against a planning application. Where a Councillor does organise support for or against a planning application then that Councillor should not vote at Development Control Committee on such a planning application. Where a Member is in doubt about such issues the Member should seek advice from the Monitoring Officer or other Senior Officer of the Legal and Regulatory Service Officers Department.

### **5.6 Predetermination**

If a Councillor expresses support for, or opposition to, a proposal before the matter is formally considered at the relevant meeting, whether or not there has been lobbying, he / she could have some difficulty in being able to claim to retain an open mind on the issue and to be prepared to determine the application on its merits. If a Councillor does express an opinion, then they should make it clear that it is a preliminary opinion and that he / she will only be in a position to take a final decision when all the evidence and arguments have been considered.

### **5.7 Members function**

Provided that Councillors comply with 5.1., 5.2, 5.3, 5.4, 5.5 and 5.6 above they are able to:-

- Listen and receive viewpoints from residents, constituents or other interested parties.
- Make comments to residents, constituents, interested parties, other Councillors or Officers.
- Seek information through the appropriate channels.

- Bring to the Committee's attention views / opinions of residents, constituents or other interested parties.
- Participate in the decision making process.

### **5.8 Disclosure**

If however a Councillor has not complied with paragraphs 5.1, 5.2, 5.3, 5.4, 5.5 and 5.6 above, and has made it clear that he or she has predetermined the matter, they should not speak or vote on the matter.

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## **6. APPLICATIONS SUBMITTED BY MEMBERS AND OFFICERS**

### **6.1 Not to be delegated**

Planning applications submitted by or on behalf of Members or any member of the Council's Development or Highway Services staff involved in the processing/commenting upon applications, any Chief Officer of the Authority or any officer reporting directly to a Chief Officer (or the spouse or partner of any of these) shall be decided by the Development Control Committee and not by the Corporate Director Communities under delegated powers if a material planning objection to their application is received.

### **6.2 Declaration of Interest**

A Member affected by clause 6.1 shall declare a personal and prejudicial interest at any meeting of the Development Control Committee to determine the application, take no part in the decision and leave the meeting place. The Member may be able to take part in proceedings as a speaker only under the relevant provisions of the Code of Conduct (see Paragraph 2.3.4 above).

### **6.3 Officer affected**

The affected Officer shall take no part in the processing of the application and its determination and shall leave any meeting of the Development Control Committee before the relevant item is discussed.

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## **7. APPLICATIONS SUBMITTED BY THE COUNCIL**

### **7.1 Equal footing Council Applications**

It is important that the Council is seen to be treating applications for its own development (or a development involving the Council and another party) on an equal footing with all other applications as well as actually doing so.

### **7.2 Council applications – Consultation**

All such proposals will be subject to the same administrative processes, including consultation, as private applications with consideration being made in accordance with policy and any other material planning considerations.

### **7.3 Transparency**

In order to ensure transparency and openness in dealing with such applications Council proposals (save for discharge of conditions) will be determined by the Development Control Committee if a material planning objection is received and not by the Corporate Director Communities Officer under delegated powers.

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## **8. PRE-APPLICATION**

### **8.1 Pre-Application Advice**

It is good practice for potential applicants to seek advice from the LPA prior to submitting an application. However, unless these discussions take place under specific rules, they can be seen as a form of lobbying (especially by objectors) or in some way predetermining the future planning application.

Pre-application discussions will (unless in exceptional circumstances) be carried out solely by officers. This is to protect the impartiality of Members. Exceptional circumstances are not defined in this document but will be limited to cases where there is an overriding need for Members to be present in the public interest.

All discussions take place on a without prejudice basis. The advice offered is not binding on the Council but every effort is made to ensure that the advice is consistent and sound in planning terms.

Members and Officers must be aware that pre application advice is no longer free of charge. This places an additional responsibility on Officers to provide a quality service. If Members later take a decision that conflicts with any pre application advice given by Officers, they must only do so for material planning reasons that are clearly expressed and recorded in minutes.

Pre application discussions will be conducted in private.

### **8.2 Pre-Application Consultation on Major Developments**

The requirement to undertake pre-application consultation applies to all planning applications for “major” development (full or outline) and applications for Developments of National Significance (DNS).

Developers are also required to undertake pre-application consultation with “community consultees” and “specialist consultees”.

“Community consultees” comprise:

- Each community council (this includes both town and community councils) in whose area the proposed development would be situated; and/or
- Each councillor (local member) representing an electoral ward in which proposed development would be situated.

Developers are required to inform all local councillors that are responsible for the electoral ward in which the proposed development is located.

If the proposed development straddles a number of electoral wards, all local councillors within those wards will be notified by letter.

Ward Members are entitled, and are often expected, to have expressed views on planning issues. If such comments are expressed members of the Development Control Committee should be careful to stress that they will only make up their mind when they have seen the full report on any particular application.

Members can through personal significant involvement in preparing or advocating a proposal be, or be perceived by the public as being, no longer able to act impartially. Members are able to take part in a consultation on a proposal and, if they are a member of the DC Committee, the subsequent determination of the application provided that:-

- They do not in any way commit themselves as to how they may vote when the proposal comes before the DC committee for determination;
- They focus only on site factors and site issues;
- They do not excessively lobby fellow councillors regarding their concerns or views and not attempt to persuade them how to vote in advance of the meeting at which the planning decision is take;
- They are not involved in negotiations regarding the application. These should be conducted by Officers separately from any pre-application discussions members have been involved in.

At pre-application consultation stage Members can ask relevant questions for the purpose of clarifying their understanding of the proposal but must remember that the presentation is not part of the formal process of debate and determination of any application.

## 9. DEVELOPMENT CONTROL COMMITTEE SITE VISITS

### 9.1 Purpose

#### 9.1.1 *Fact Finding*

Development Control Committee site visits are not meetings where decisions are made and neither are they public meetings. They are essentially fact finding exercises held for the benefit of Members where a proposed development may be difficult to visualise from the plans and supporting material.

They may also be necessary for careful consideration of relationships to adjoining property or the general vicinity of the proposal due to its scale or effect on a listed building or conservation area for example.

### 9.2 Request for a Site Visit

#### 9.2.1 *Ward Member request for Site Visit*

Site visits can be costly and cause delays so it is important that they are only held where necessary normally on the day prior to Committee and where there is a material planning objection.

Site visits must never be called simply to expose other Members to the strength of public opinion. The public speaking policy exists for the public to be heard at Planning Committee. The volume of objectors or supporters to a planning application is not relevant if the basis of their opinion is based upon non material planning considerations.

Site visits, whether Site Panel or Full Committee, are held pursuant to (1) a decision of the Chair of the Development Control Committee (or in his/her absence the Vice Chair) or (2) a request received within the prescribed consultation period from a local Ward Member (or another Member consulted because the application significantly affects the other ward), and where a material planning objection has been received by the Development Department from a statutory consultee or local resident.

A request for a site visit made by the local Ward Member or another Member in response to being consulted on the proposed development must be submitted in writing or electronically within 21 days of the date they were notified of the application **and shall clearly indicate the material planning reasons for the visit.**

Site visits cannot be undertaken for inappropriate reasons (see Paragraph 9.2.2).

#### 9.2.2 *Inappropriate Site Visit*

Examples where a site visit would not normally be appropriate include where;

- purely policy matters or issues of principle are at issue
  - to consider boundary or neighbour disputes
  - issues of competition
  - loss of property values
- any other issues which are not material planning considerations (See Appendix 2) where Councillors have already visited the site within the last 12 months

## **9.3 Format and Conduct at the Site Visit**

### **9.3.1 Attendance**

Members of the Development Control Committee, the local Ward Member(s) and the relevant Town or Community Council will be notified in advance of any visit.

The applicant and/or the applicant's agent will also be informed as will any person who has registered an intention to speak at Committee but it will be made clear that representations cannot be made during the course of the visit.

### **9.3.2 Officer Advice**

The Chair will invite the Planning Officer to briefly outline the proposals and point out the key issues raised by the application and of any vantage points from which the site should be viewed.

Members may ask questions and seek clarification and Officers will respond. The applicant or agent will be invited by the Chairman to clarify aspects of the development and the local Ward Member(s) and one objector who has registered a request to speak at Committee and a Town/Community Council representative will be allowed to clarify any points of objection, both only in respect of any features of the site or its locality which are relevant to the determination of the planning application. Any statement or discussion concerning the principles and policies applicable to the development or to the merits of the proposal will not be allowed.

### **9.3.3 Code of Conduct**

Although site visits are not part of the formal Committee consideration of the application, the Code of Conduct still applies to site visits and Councillors should have regard to the guidance on declarations of personal interests.

### **9.3.4 Record keeping**

A file record will be kept of those attending the site visit.

### **9.3.5 Site Visit Summary**

In summary site visits are:-

- A fact finding exercise.
- Not part of the formal Committee meeting and therefore public rights of attendance do not apply.
- To enable Officers to point out relevant features.
- To enable questions to be asked on site for clarification. However, discussions on the application will only take place at the subsequent Committee.

The frequency and reason for site inspections will be monitored and reports will be submitted periodically to Committee, in order that these guidelines can be kept under review.

## **10. PROCEDURE AT DEVELOPMENT CONTROL COMMITTEE**

### **10.1 Delegation**

The majority of planning applications are determined by the Corporate Director Communities Officer under the Council's Delegation scheme. This is necessary to ensure that most decisions are made in a timely manner.

Delegation is a more efficient and speedy means of determining planning applications. In most instances the outcome will be the same. Increased performance management and targets set by Welsh Government mean that delegation will need to increase in future if these targets are to be met.

Whilst Members have a right to request that applications affecting their ward be determined by the Development Control Committee such requests can only relate to applications where a material objection has been lodged and should then be justified by clearly identifying in writing why a Committee decision is required. This is generally done on the return notification form sent out to Ward Members.

The delegated arrangements shall be in accordance with the Council's scheme of Delegation of Functions (See Appendix 1).

### **10.2 Reports**

Officers will produce written reports on all planning applications reported to Committee. In respect of each proposal the report will include, amongst other matters:-

- description of the proposal,
- description of the site,
- responses to consultations and officer observations thereon,
- summary of objections and / or support received,
- relevant site history,
- relevant Development Plan policies,
- relevant planning guidance where appropriate,
- any other material planning consideration,
- an appraisal by the Case Officer which will include the relevant views of other consulted Officers within the Development Department,
- a clear recommendation,
- brief details of any conditions to be imposed, or,
- full details of reasons for refusal.

### **10.3 Late observations**

Late observations received by 4.00p.m. the day before a Committee meeting will be summarised and reported separately and circulated to Members immediately prior to the start of the meeting. Members should not attempt to introduce documentation at the Committee meeting where the Planning Officer has not had an opportunity to consider the contents of the documentation. This is essential to ensure Members receive properly considered and correct advice.

### **10.4 Officer Report at Committee**

The Planning Officer will at the Chairs request briefly introduce each item highlighting the key issues for Members consideration.

### **10.5 Deferment**

Where a Member seeks and obtains a majority for a deferment for a specific purpose then there will be no further debate on that matter until such time as the proposal is re-presented.

Public Speaking will take place in accordance with the agreed Public Speaking arrangements.

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## **11. DECISIONS CONTRARY TO OFFICER RECOMMENDATION**

From time to time members of the Development Control Committee will disagree with the professional advice given by the Corporate Director Communities. The Committee's decisions must be in accordance with the provisions of the Development Plan unless material considerations indicate otherwise. If Members are minded to make a decision contrary to the Officer's recommendation the application should be referred to the next meeting of the Committee to enable officers to advise Members further.

Where a Member proposes a recommendation contrary to the Officer's recommendation then the proposer should set out clearly the material planning reasons for doing so. The Chairperson will ensure that the Officer is given the opportunity to explain the implications of the contrary decision, before a vote is taken.

In cases where the Development Control Committee decides for good and valid reasons to depart from the Corporate Director Communities recommendation, the Committee must always define the reasons for rejecting the Officer's recommendation and those reasons must be recorded in the minutes of the meeting.

Where Members of the DC Committee are minded to take a decision against Officers recommendation, so that consideration of that matter is deferred to the next meeting of the Committee, Members will receive a further report from Officers upon the strengths and weaknesses of any proposed or possible planning reasons for such a decision.

In cases where Members overturn an Officer's recommendation for approval, the reasons for will be drafted and reported back to members at the next Development Control meeting. In cases where Members overturn an Officer's Recommendation for refusal, conditions subject to which the planning approval should be granted (and if relevant any section 106 obligations which should be imposed on the grant of consent) will be drafted and reported back to members at the next Development Control meeting.

## **12. APPEALS AGAINST COUNCIL DECISIONS**

### **12.1 Officers Role**

Officers will defend planning appeals on behalf of the Council whether by written representations, through a hearing or public inquiry. In some circumstances where specialist knowledge is required it may be necessary to appoint consultants to present the Council's case. There is no budget for such commissions and decisions of this sort will only be taken by the Group Manager – Development in consultation with the Chief Legal Officer.

### **12.2 Committee Members Role**

In cases where an appeal is lodged as a result of a decision taken contrary to Officer advice, the Group Manager – Development will consider whether Members should present the case for the Council. There will be instances where Officers can act in an advocacy role and defend a decision they do not agree with.

However, in cases where that decision is considered unsound, unreasonable or would otherwise compromise the professional position of Officers, Members will be required to present the case, potentially with the aid of an appointed consultant. Officers will assist in terms of technical, logistical and administrative support.

### **12.3 Members support of an appellant**

Where a member, who has expressed support for the applicant at the time of the decision, decides to make representations supporting the appellant, that member must ensure that those representations are qualified at the beginning of an appeal to confirm that those representations are not the view of the Local Planning Authority but are purely the view of that particular member.

Where a Member wishes to make representations at an appeal that are contrary to the decision of the DC Committee they should first inform the Group Manager - Development of their decision so that the Planning Inspectorate can be informed. Members in these circumstances must understand that the views that they put forward do not represent the views of the Council or the DC Committee.

### **12.4 RTPI Code of Conduct**

Whether or not the Officer is a member of the Royal Town Planning Institute, they will be required to respect the professional code of conduct of that RTPI. It demands that Officers do not make statements purporting to be their own but which are contrary to their *bona fide* professional opinion.

Where the Corporate Director Communities clearly feels that Officers would be unable to defend such decisions on appeal (due to requirements of the Professional Code of Conduct of the Royal Town Planning Institute) then this shall be made known to the Committee. In such cases the Committee may nominate a Member who voted contrary to the recommendation to appear at any appeal and explain the Committee decisions and the reasons for them.

### **13. PLANNING AGREEMENTS AND SECTION 106s**

Section 106 agreements are legal obligations. They require a developer to fulfil certain obligations to enable a development to take place e.g. improve an offsite road junction.

Planning permission must never be bought or sold. S106 agreements are not a mechanism for developers to offer “sweeteners” to a Council to obtain planning permission. Similarly, they are not a means of securing facilities that the Council should be providing in any event regardless of the proposal. The obligations placed on a developer must pass the relevant legal tests set out in the Regulations. They must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. All s106 negotiations will take place in light of the LDP and the adopted Supplementary Planning Guidance Document.

The Development Control Committee may, when considering the merits of an individual planning application, consider any planning obligation which has been offered by the applicant or agent but should form a view solely on the basis of the contents of the application and should take into account offered planning obligations only to the extent that they are necessary to make a proposal acceptable in land use planning terms.

Where the draft Heads of Terms of a Section 106 Legal Agreement has been the subject of negotiation between Officers and the applicant/agent post a resolution by Members to approve an application subject to the original terms, Officers will refer any proposed changes back to DC Committee for approval.

Councillors should avoid becoming involved in discussions with applicants, prospective applicants, their agents, landowners or other interested parties regarding benefits, which may be offered to the Council, or benefits which the Council itself wishes to obtain.

## **14. REGULAR REVIEW OF DECISIONS**

### **14.1 Reviewing Decisions**

As part of the aim to continually improve the quality of planning decisions, Members will be offered the opportunity to revisit implemented planning decisions on site. Such reviews will be a positive step to improve the quality and consistency of decision-making, not only strengthening public confidence in the planning system but also assist with the review of planning policy.

Such reviews will take place when there is scope to fit the programme in between DC Committee meetings and briefing notes will be prepared for each case. The DC Committee will formally consider the review and decide whether it gives rise to the need to reconsider any policies or practices.

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## **15. COMPLAINTS PROCEDURE**

The Council has a formal complaints policy and system in operation, which can be used if someone wishes to make a complaint about the operation of the planning system. This policy does not apply if the matter relates to a Freedom of Information or Data Protection issue.

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## Appendix 1

### **SCHEME OF DELEGATION**

The Council operates a scheme of delegation where they have delegated powers to officers to determine most planning applications and other related planning submissions. The Audit Commission has advised that 90% of all planning applications should be determined under delegated powers. This Authority now determines in excess of 90% of all applications received under delegated power arrangements.

Applications to be accepted and dealt with by the Development Control Committee should be as follows:-

- a) an application which is contrary to the provisions of an adopted development plan, and which is recommended for approval, or an application which accords with the provisions of an approved development plan, but which is nevertheless recommended for refusal.
- b) [i] an application in respect of which a statutory consultee has submitted a material planning objection in writing/electronically within the stipulated consultation period and which has not been resolved by negotiation or through the imposition of conditions and which is recommended for approval.  
  
[ii] an application in respect of which a Town/Community Council has submitted a material planning objection in writing/electronically within the stipulated consultation period and which has not been resolved by negotiation or through the imposition of conditions and which is recommended for approval and where other objections to the proposal have been received. If no other objections are received the Corporate Director Communities in consultation with the Chairman of the Development Control Committee shall determine the materiality of the objection to the assessment of the application and whether the application should be reported to the Development Control Committee.
- c) an application which a local Member formally requests should be the subject of consideration by the Development Control Committee by notifying the Corporate Director Communities in writing/electronically (within 21 days of the circulation of details of the application) of the material planning reasons why the Councillor considers the application should be considered by the Committee unless (i) a delegated decision would be in line with the views of the Member or (ii) no other objection has been received within the consultation/publicity period and the Chairman of the Development Control Committee does not consider it necessary to report the application to Committee.
- d) an application in respect of which more than two neighbours have submitted a material planning objection in writing/ electronically within the stipulated consultation period, which has not been resolved by negotiation or through the imposition of conditions, and which is recommended for approval. The Corporate Director Communities in consultation with the Chairman of the Development Control Committee shall determine whether objections from members of the same

household be treated as one neighbour objection.

- e) an application submitted by or on behalf of a Councillor, any member of the Council's Development or Highway Services staff involved in the processing/commenting upon applications, any Chief Officer of the Authority or any officer reporting directly to a Chief Officer (or the spouse or partner of any of these) if a material planning objection has been received within the stipulated consultation period.
- f) an application submitted by the Corporate Director Communities if a material planning objection has been received within the stipulated consultation period.
- g) an application which the Corporate Director Communities considers should be presented to Committee for decision including those that in the opinion of the Director are potentially controversial, likely to be of significant public interest or which may have a significant impact on the environment.

**The Scheme of Delegation was last updated on 16 November 2011.**

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## **Appendix 2 – Planning Considerations**

### **Relevant or Material Planning Considerations:**

When a decision is made on a planning application, only certain issues can be taken into account. These are referred to as ‘material planning considerations’. This list is not exhaustive or in order of importance.

- ✓ *Local and national planning policies eg the Local Development Plan and Planning Policy Wales.*
- ✓ *EU law and regulations.*
- ✓ *Government circulars, orders, statutory instruments, guidance and advice e.g. TAN's.*
- ✓ *Planning history including appeal decisions and pre-application consultation with the LPA.*
- ✓ *Case law.*
- ✓ *Socio economic benefits e.g. employment generation.*
- ✓ *Sustainability.*
- ✓ *Nature conservation including habitat and biodiversity opportunities.*
- ✓ *Loss of outlook or overshadowing (not loss of view).*
- ✓ *Flood risk.*
- ✓ *Overlooking and loss of privacy.*
- ✓ *Highway issues e.g. traffic generation, access, highway safety.*
- ✓ *General noise or disturbance resulting from use, including proposed hours of operation.*
- ✓ *Odours, air quality and emissions.*
- ✓ *Archaeology.*
- ✓ *Capacity of infrastructure, e.g. public drainage systems.*
- ✓ *Deficiencies in social facilities, e.g. spaces in schools.*
- ✓ *Contaminated land.*
- ✓ *Loss of or effect on trees.*
- ✓ *Disabled access to existing buildings.*
- ✓ *Effect on listed buildings and conservation areas.*
- ✓ *Layout, scale, appearance and density of buildings.*
- ✓ *Landscaping and means of enclosure.*
- ✓ *Loss of open space.*
- ✓ *S106 or CIL.*

The weight attached to material considerations is a matter of judgement. This will differ from case to case. The decision taker is required to demonstrate that in reaching every decision, they have considered all relevant matters. Greater weight must be attached to issues which are supported by evidence rather than solely by anecdote, assertion or assumption.

## **Non-material or Irrelevant Planning Considerations:**

The LPA is not allowed to take the following into account when deciding a planning application.

- \*Devaluation of property.*
- \*Precedent.*
- \*Moral, racial or religious issues.*
- \*Internal layout of buildings.*
- \*Matters controlled by other legislation e.g. structural stability, fire precautions, licences etc.*
- \*Private issues between neighbours e.g. ownership/ boundary disputes, damage to property, private rights of access, covenants, private rights to light, maintenance of property.*
- \*The identity of the applicant, their motives, personal circumstances or track record in planning.*
- \*Previously made objections/representations regarding another site or application.*
- \*Competition between individual private businesses or the “too many already” principle.*
- \*Loss of view.*
- \*Time taken to complete development.*

## **Appendix 3**

### **NOTES ON PROCEDURE FOR PUBLIC SPEAKING AT DEVELOPMENT CONTROL COMMITTEE MEETINGS - BCBC**

#### **Introduction**

The following notes are designed to help you to decide if you are eligible to speak at Committee and if so how to go about it, should you wish to do so (please note some 85% of all applications are dealt with under delegated powers and are not reported to Committee).

#### **The Meetings**

The Development Control Committee is normally held at the Civic Offices, Angel Street, Bridgend, CF31 4WB every sixth Thursday. The applications that are to be discussed at Committee are set out on a report which is available beforehand. You are advised to arrive no later than 20 minutes before the meeting which starts at 2pm. A clerk will advise on seating and answer any other queries.

**Speakers should advise the Council in advance if they have any special needs.**

#### **Webcasting of meetings**

Speakers should be aware that the meetings will be webcasted live and your image and voice will be on the website unless you specifically advise us that you do not wish to appear on camera at the same time as applying to speak at the Committee meeting.

#### **Are you eligible?**

You should be one of the following:-

- A County Borough Councillor not on the Development Control Committee within whose ward the application is situated, or a Cabinet member;
- An objector against the application or their representative who has submitted an objection in writing detailing your concerns (an 'anonymous' objector would not qualify);
- A representative of a Town or Community Council;
- The applicant or their agent/advisor.

#### **How do I go about it?**

It is your responsibility to check whether the application is to be considered by Committee by contacting the Case Officer. You can ring the Department to ascertain the date of the Committee meeting at which the application is due to be considered, please telephone (01656) 643155. Whilst notification letters are sent out 6 days before committee, I am unable to guarantee the postal service. Please note that you will only have a short period in which to decide if you want to speak.

#### **When can I see the Officer's report?**

The report is available for public inspection from the Monday before the meeting at the Civic Offices, Angel Street, Bridgend or on the following website:  
[www.bridgend.gov.uk/planning](http://www.bridgend.gov.uk/planning)

### **How can I register my desire to speak?**

If you wish to speak you should write to the Development Department as soon as possible and no later than **four clear working days** before the date of the Committee meeting including details of a day time telephone number.

You also must confirm between 8.30am and 10.00am on the day of Committee that you still intend to speak or no longer wish to speak by phoning the Cabinet and Committee Officer on (01656) 643148.

### **How is the speaking organised?**

Where more than one objector registers to speak, they will be encouraged to appoint a spokesperson, only one objector can speak per application. This could be a representative of the relevant Town or Community Council or County Borough Councillor not on Committee. Where no agreement can be reached by the objectors the Chairman will allocate the time to the first person to register. The County Borough Councillor not on Committee speaks first and the objector speaks next.

### **How will the scheme work for Applicants/Agents?**

Once it is known that an objector has registered to speak against an application the applicant or agent will be notified by the Development Department. If the applicant or agent wishes to exercise the right of reply they must notify the cabinet and committee officer on Tel. No (01656) 643148 between 10.00am - 10.30am the day of committee.

Time will be allowed for speaking immediately after the objector and Town/Community Council representative/County Borough Councillor not on Committee or Cabinet Member has spoken. No guarantee will be given that an application will be determined at any particular Committee nor that an objector will actually speak.

### **How the scheme will work for Town and Community Councils?**

Town and Community Councils will continue to be notified as at present of the receipt of all planning applications in their area. If the Town/Community Council resolve to object to any application and notify the Development Department as above, they will be entitled to address the Development Control Committee.

### **How long can I speak?**

Objector, Applicant, Agent or County Borough Councillor not on Committee or Cabinet Member - **Up to three minutes maximum**. This limit will be strictly observed.

### **Extraordinary Applications**

In the case of extraordinary applications Committee will consider whether public speaking rights need to be extended.

If Committee agree objectors and applicants will each have up to a maximum of 10 minutes to address Committee. This time can be shared amongst different objectors or representatives on behalf of the applicant. County Borough Councillors not on Committee and the representatives of a Town/Community Council will continue to have 3 minutes to address Committee.

### **What can be said at Committee?**

Comments should be limited to relevant Planning issues already raised in the written representations or application. These may include:-

- Planning policies, including those in the Development Plan;
- Appearance and character of development, layout and density;
- Traffic generation, highway safety and parking;
- Overshadowing, overlooking, noise disturbance or other loss of amenity.

Matters that cannot be considered by Committee include:-

- Boundary disputes, covenants and other property rights;
- Personal remarks (eg. The applicant's motives);
- Rights to a view or potential devaluation of property.

The presentation of plans, drawings or other visual aids, the taking of photographs or the use of voice recording equipment will not be permitted. Speakers may not ask questions of others at the meeting, nor will others be allowed to ask questions of them unless the Chairman wishes to seek clarification. Speakers can ask for plans/documents submitted with the application and for O.S. plans to be displayed but facilitating such requests will use up part of their speaking time.

### **Who else can speak?**

**Officers of the Council** - to present report recommendation and provide advice.

**Members of the Committee** - to consider and reach a decision.

### **When is the decision made?**

Usually immediately after the discussion by a majority vote of the Committee Members. Sometimes a decision will be deferred for further information, revised plans or a Members' site visit. Deferred cases are normally brought back to the following meeting and if you wish to speak again, or someone else wishes to speak, then you will need to follow the above procedure. Please be aware that the Members have to balance different factors and come to an objective decision based on planning considerations. If they refuse an application contrary to the Officer's recommendation, they will need to be able to support that decision on appeal.

### **Can I appeal against the decision?**

Only if you are the applicant.

### **What happens after the Committee?**

The Committee's decision and the reasons for it will be confirmed to applicants and objectors in writing. Normally applicants (or their agents) will be notified of the decision within three working days, and objectors shortly afterwards.

### **What happens once a decision is made?**

Persons who have written to the Council will be notified of the outcome in writing. If the applicant was not determined the way you would have wished, try to understand how it was looked at by the Council. The Development Control service is committed to best practice and encourages feedback from customers.