

# Agenda Item 7

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

|                        |                                           |
|------------------------|-------------------------------------------|
| <b>Decision Maker:</b> | Regulatory Committee                      |
| <b>Date:</b>           | 20 October 2021                           |
| <b>Title:</b>          | Update Report on Planning Code of Conduct |
| <b>Reference:</b>      |                                           |
| <b>Report From:</b>    | Legal Services, Corporate Services        |

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### 1 Purpose of report

- 1.1 The purpose of this report is to inform Regulatory Committee members of the updated Planning Code of Conduct (“the Code”), the reasons for the update and the governance requirements required to bring this updated Code into effect. The Committee need to consider the amendments to the Code and decide whether to recommend the Code for adoption by full Council. If recommended the Code will then be taken to the next full Council meeting for adoption.

### 2 Recommendations

- 2.1 That Regulatory Committee recommends adoption of the updated Planning Code of Conduct together with the onward governance requirements necessary to give effect to the Code.

### 3 Contextual information

- 3.1 Hampshire County Council’s Legal Services has recently undertaken a review of the Code. This is to ensure it is compliant with current legislation and to reflect good practice. The code was last reviewed in February 2014.
- 3.2 The Code forms part of the County Council’s Constitution and can be found at Part IV Appendix B within the Constitution.

- 3.3 The Code has been redrawn to provide a clearer document setting out the conduct responsibilities of both Members and Officers when considering matters brought to Regulatory Committee. These responsibilities are set out separately for Members and Officers for easier reference. They have been updated where necessary in accordance with current legislation.
- 3.4 The Code expands the details on Member Training, providing a mandatory requirement for Members to have attended basic training in advance of first sitting on Regulatory Committee.
- 3.5 The Code sets out the details relating to the running of and participation in Regulatory Committee meetings and associated site visits (where appropriate.) These provisions have not altered in principle but have been expanded for clarity.
- 3.6 The Code includes more detail on the process to be adopted for amending recommendations
- 3.7 The Code now has an index to aid interpretation and permits easier cross-refencing to other relevant elements of the Constitution when viewed electronically.
- 3.8 The proposed changes to the Code have been informed by discussions with the County Council's Monitoring Officer. Legal Services has also worked closely with officers from Economy Transport and Environment and Culture, Communities and Business Services departments that work closely with Regulatory Committee.

#### **4 Future direction**

- 4.1 In order to effect the proposed changes to the Code, the updated Code must be approved by full Council as an amendment to the Constitution. Subject to Regulatory Committee recommending adoption of the Code a Part I report will be presented to full Council on 4<sup>th</sup> November 2021 to seek approval of the updated Code and its subsequent incorporation into the constitution.

## **REQUIRED CORPORATE AND LEGAL INFORMATION:**

### **Links to the Strategic Plan**

|                                                                                   |    |
|-----------------------------------------------------------------------------------|----|
| <b>Hampshire maintains strong and sustainable economic growth and prosperity:</b> | No |
| <b>People in Hampshire live safe, healthy and independent lives:</b>              | No |
| <b>People in Hampshire enjoy a rich and diverse environment:</b>                  | No |
| <b>People in Hampshire enjoy being part of strong, inclusive communities:</b>     | No |

**OR**

**This proposal does not link to the Strategic Plan but, nevertheless, requires a decision because:**

The report outlines changes to the Planning Code of Conduct which governs the Regulatory Committee and so the report is required to inform members and promote transparency.

### **Section 100 D - Local Government Act 1972 - background documents**

**The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)**

None

## **EQUALITIES IMPACT ASSESSMENTS:**

- **Equality Duty**

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The decision in this report relates to the internal governance processes of the Regulatory Committee and therefore has a neutral impact on groups with protected characteristics.

# **Part 4**

# **Appendix B – Planning Code of Conduct**

## **Local Protocol on Planning, Rights of Way, Commons and Village Greens Registration for Members of Regulatory Committee, Substitute Members of Regulatory Committee and Officers**

Contents:

1. General Matters and Role of the Committee
2. Members Conduct:
  - General
  - Registration and Disclosure of Disclosable Pecuniary Interests, Personal Interests, Gifts and Hospitality
  - Declarations of Interest
  - Bias or Pre-determination
  - Pre-disposition
  - Dual Hatted Members
3. Lobbying of and by Members and attendance at public meetings
  - Lobbying
  - Public Meetings
4. Member Training
5. Officers Conduct:
  - General
  - Officer Attendance at Public Meetings
6. Officer Pre-Application and Pre-Decision Making Discussions
7. Membership of the Committee
8. Items to be considered by the Committee

**9. Officer Reports to the Committee:**

- General
- Planning Reports
- Rights of Way, Village Green and Commons Registration Reports

**10. Development, modification or registration proposals submitted by Members, Officers and County Council:**

- Member of Officer applications
- County Council Applications (including Reg. 3 applications)

**11. The Committee Process:**

- Determining Planning Matters
- Determining Rights of Way, Village Greens and Common Registration Matters
- Meeting Structure and Order

**12. Deputations to Committee:**

- Applicants, agents, interested parties other than local Members
- Local Members wishing to address the Committee

**13. Submission of additional information for the Committee meeting**

**14. Decision Making by the Committee:**

- General
- Amendments to Recommendations
- Planning - decision making
- Rights of Way, Village Greens, Commons Registration – decision making

**15. Site Visits by the Committee**

**16. Record of Committee meetings**

**17. Complaints about the Committee**

**18. Freedom of Information/Environmental Information requests related to the Committee**

Annex A - links to procedural guidance for public path orders, definitive map modification and town and village green applications

Annex B - Guidance for determining planning applications

Annex C - Scheme of delegation for planning decisions

## **1. General Matters and Role of Committee**

- 1.1 The public is entitled to expect the highest standards of conduct and probity by all persons holding public office. There are statutory provisions and codes (for both members and officers) which set standards that must be followed if the public perception of the integrity of public service is to be maintained.
- 1.2 Planning Applications are to be determined in accordance with the development plan unless material considerations indicate otherwise.<sup>1</sup> The emphasis in determining applications is upon a plan-led system.
- 1.3 Town Green or Village Green registration applications are to be determined in accordance with the Commons Act 2006, accompanying relevant legislation, government guidance, and supporting case law.
- 1.4 Rights of Way matters will be determined in accordance with relevant legislation, government guidance and supporting case law.
- 1.5 Commons Registration matters will be determined in accordance with relevant legislation, government guidance and supporting case law.
- 1.6 Whilst this local Protocol ('the Protocol') deals primarily with regulatory matters listed above, the principles apply equally to consideration of local development documents and briefs, enforcement cases and all other related matters.
- 1.7 Throughout the Protocol references to Regulatory Committee ("Committee") apply equally to all sub-committees, panels and meetings of the County Council when exercising regulatory functions.
- 1.8 This Protocol is supplemental to the Members' Code of Conduct and Officer's Code of Conduct (and also supplemental to other relevant legislation) and provides further specific advice and guidance for Members and Officers involved in Committee matters.
- 1.9 Only Officers and Members who are prepared to observe this Protocol should be involved in the process of dealing with regulatory matters and determining planning, rights of way or commons registration applications.

## **2. Members Conduct**

### **General**

- 2.1 This Protocol applies equally to Members and Substitute Members of the Committee, as provided for in the County Council's Constitution.
- 2.2 Dealing with regulatory matters places upon Members a particular need for

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<sup>1</sup> Section 38(6) of the Planning and Compulsory Purchase Act 2004 states: if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

probity and they must ensure that only relevant considerations are taken into account.

- 2.3 Members should not favour any individual or groups and must determine matters brought before the Committee in accordance with relevant policy and guidance. Whilst Members should take account of all views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.
- 2.4 Members should not openly and finally declare which way they intend to vote in advance of a Committee meeting. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration.
- 2.5 Members should reach their own conclusions after full consideration of all available information at Committee, rather than follow the lead of another Member.
- 2.6 A Member should not use their position to further a private or personal interest, rather than the general public interest, or give the impression this is the case.
- 2.7 All Members are required to comply with the provisions of the Members' Code of Conduct or any successor document and the Protocol for Member/Officer Relations or any successor document.

### **Registration and Disclosure of Disclosable Pecuniary Interests, Personal Interests, Gifts and Hospitality**

- 2.8 Members should observe the requirements in respect of the registration and disclosure of both Disclosable Pecuniary Interests and Personal Interests set out in the Members' Code of Conduct. Members who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Committee.
- 2.9 Members should observe the requirements in respect of the registration of gifts and hospitality set out in Members' Code of Conduct. Where hospitality is unavoidable it should be minimal and its receipt declared as soon as possible.

### **Declarations of Interest**

- 2.10 Members should declare an interest in any item at the beginning of a meeting or as part of the relevant agenda item for each meeting. This will take place before any item is considered by the Committee.
- 2.11 The responsibility for determining the nature of and declaring any interest lies with the individual Member
- 2.12 Where a Member is unsure of their interest being a Disclosable Pecuniary Interest or a Personal Interest that should be declared, the Member shall seek advice from the Legal Adviser to the Committee, or the Monitoring Officer, as soon as the issue becomes apparent. To avoid undue delay at a meeting and to

ensure that any interest is properly considered such advice should be sought at least three working days before the meeting at which the matter is being discussed.

### **Bias or Pre-determination**

2.13 Any Member of the Committee with Bias or who have Pre- determined<sup>2</sup> a matter should not participate at all in the decision-making process. If they do there is a strong risk that the decision will be vulnerable to challenge by way of judicial review and possibly quashed.

2.14 Bias can be assessed by asking two questions:

- 2.14.1 Would a fair-minded observer, knowing the background, consider that there was a real possibility of bias arising from a particular Member being a member of the relevant decision-making body?; and
- 2.14.2 Would a fair-minded and informed observer consider that there was a real possibility that the Committee, or some of its members, were biased in the sense of approaching the decision with a closed mind and without impartial consideration of the relevant issues?

2.15 Pre-determination occurs when a Member's mind is closed to the merits of any arguments which differ from his/her own about a particular issue on which the Member is making a decision. It is objectively determined. Pre-determination is likely to be evidenced by previous statements by the Member either at meetings or in the Press, that he/she is determinedly for or against a proposal, that they have reached a decision, and nothing will change their mind.

2.16 Members should approach decision making with an open mind, having regard to all the material facts and remain open to the possibility that, however unlikely, they may hear arguments during debate that might change their mind about how they intend to vote. In doing so, such Member will not be held to have pre-determined an issue.

### **Pre-disposition**

2.17 Members of the Committee are not precluded from expressing views favourable to or against matters that are likely to come before them for a decision at Committee.

2.18 Members should, to avoid the claim that they have pre-determined the matter, qualify any comments made (favourable or otherwise), with a statement that their views are not fixed or final and they will make their final decision taking into consideration all the information presented to them. This will include Officer Reports, deputations, questioning of deputations and Officers, and debate at the Committee meeting.

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<sup>2</sup> Section 25 of the [Localism Act 2011](#) clarifies the legal concept of pre-determination and applies to all Members.

## **'Dual Hatted' Members**

- 2.19 Members of the Committee who are also members of a District, Borough or City Council or National Park Authority may be faced with taking a decision on the same matter at both tiers. Members are not precluded from making decisions at both tiers providing, at the meeting which deals with the matter first, they make it clear that any decision is being made on the basis of the information before them at that meeting, and any subsequent decision will be made on the basis of the information before that subsequent meeting. However, depending on the significance of the decision in question, Members may sometimes consider it preferable to abstain from decision making at one tier or the other.
- 2.20 Members who find themselves in the position described above are advised to declare any such involvement as a relevant Personal Interest at the relevant time during the Committee meeting.
- 2.21 Members unsure of their position should seek advice from the Legal Adviser at the Committee meeting, or the Monitoring Officer. Any final decision as to whether a Member should form part of decision making by the Committee rests with the individual Member.

## **3. Lobbying of and by Members and Member attendance at public meetings**

### **Lobbying**

- 3.1 For Members to undertake fully their constituency roles it is inevitable that they will be subject to lobbying on regulatory matters and specific applications. It is essential to maintain the integrity of both the County Council and Members and the public perception of the regulatory process when Members are lobbied. Members should not, therefore, favour or appear to favour, any person, company, group or locality.
- 3.2 Members involved in the decision making on regulatory matters should not:
  - 3.2.1 organise support or opposition to a proposal;
  - 3.2.2 lobby other Members;
  - 3.2.3 act as an advocate; or
  - 3.2.4 put pressure on officers for a particular recommendation.
  - 3.2.5 However, other Members (who are not part of the decision making process) can make representations and address the Committee.
- 3.3 Any political group meetings prior to Committee meetings should not be used to decide how Members should vote, and votes on such matters should not be taken at such political group meetings. The view of the Local Government Ombudsman is that the use of political 'whips' at group meetings in this way amounts to maladministration.
- 3.4 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer who

will in turn advise the appropriate Officers (usually the Director of Economy, Transport and Environment or the Director of Culture, Communities and Business Services, as appropriate).

### **Public Meetings**

- 3.5 Members of the Committee should take great care to maintain impartiality when attending public meetings in relation to such matters. At such meetings it is preferable for no view on the merits or otherwise of a proposal or application to be given, but if a view is given the advice in paragraph 3.6 and 3.7 below should be followed.
- 3.6 Members should not openly and finally declare which way they intend to vote in advance of the Committee meeting. To do so without all relevant information and views would be unfair and prejudicial, and may amount to maladministration.
- 3.7 If Members are in a position where they consider it necessary to express an opinion, they should make it clear that this is a preliminary view and that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee.

### **4. Member Training**

- 4.1 Seminars are held after the County Council elections to give guidance to all Members on the declaration of interests and any other issues in the Members' Code of Conduct.
- 4.2 Members (including Substitute Members) appointed to the Committee must demonstrate a commitment to being trained, both upon appointment and throughout their period of service. All Members of the Committee will receive training in the following areas:
  - 4.2.1 committee protocol and procedures;
  - 4.2.2 policy and procedure in respect of planning, rights of way, village greens and commons registration;
  - 4.2.3 the development plan; and
  - 4.2.4 past implemented planning decisions.
- 4.3 It is mandatory requirement for new Members (including Substitute Members) of the Committee to undertake 'Initial Committee Training' before they are able to take a seat on the Committee. Initial Committee Training will provide new Members with an induction in the relevant legislative frameworks covering the matters considered by the Committee, committee protocol and procedures and their duties as a Member of the Committee.
- 4.4 All Members (including Substitute Members) must attend 'Refresher Training' sessions to be held three times a year organised by officers. The Refresher Training will provide all Members with a review of current legislation, recent caselaw and any anticipated future changes to legislation.

- 4.5 Where a Member (including a Substitute Member) is unable to attend any Refresher Training session it is the Member's responsibility to arrange alternative training pursuant to 4.9 below to ensure they are updated and maintain their competency.
- 4.6 Training will be discussed within each Committee meeting and Members advised of any forthcoming training events or, if appropriate, informed of any recent decisions relevant to the operation of the Committee.
- 4.7 Every four years, after the County Council elections, a special event will usually be arranged usually in early June to ensure that all Members (including returning Members and Substitute Members) of the Committee are familiar with the operation of the Committee, this Protocol and current legislation.
- 4.8 The content of each Training Session will be determined by the Director of Economy, Transport and Environment, Director of Culture Community and Business Services, Legal Adviser, relevant Democratic and Member Services Officer or Monitoring Officer in discussion with the Chair of the Committee.
- 4.9 Members (including Substitute Members) can request individual coaching sessions with Officers if unable to attend Training Sessions.
- 4.10 Periodic tours are arranged for Members (including Substitute Members) to help develop an understanding and appreciation of the complex issues associated with planning decision making, and provide the opportunity for Members (including Substitute Members) to see the permissions that they have granted in operation and to assess the impacts of the committee's decision-making process. All Members (including Substitute Members) of the Committee will be expected to attend these tours when they are arranged.
- 4.11 All Members (including Substitute Members) of the Committee are required to maintain their competency to determine matters brought to the Committee by attending the Training Sessions offered throughout the calendar year and the periodic tours. Those Members (including Substitute Members) who fail within a two year calendar period to attend Refresher Training (or don't make alternative arrangements as noted in 4.5 above) or fail to demonstrate adequate understanding of the operation of the Committee will be reported by officers to the Chair and the Monitoring Officer.
- 4.12 The Monitoring Officer in consultation with the Chair of the Committee will consider whether the significance of any failure of a Member (including Substitute Member) to attend a sequence of training events warrants referral to the relevant Group Leader regarding exclusion from the Committee and any breach of the [Member's Code of Conduct](#).

## 5. Officers Conduct

### General

- 5.1 Officers are employed by, and serve, the whole County Council. They advise the

County Council, the Executive and its non-Executive committees, and are responsible for effective implementation of County Council decisions.

- 5.2 Officers must act in accordance with the requirements of the [Local Government and Housing Act 1989](#), and all other relevant legislation, the County Council's [Constitution](#) the County Council's [Officers' Code of Conduct](#) and the [Protocol for Member/Officer Relations](#). Officers must also act in accordance with the orders of conduct of the professional bodies to which they belong.<sup>3</sup>
- 5.3 Officers must always act impartially. The County Council will review, on a regular basis, the restrictions in relation to outside activities under the [Local Government and Housing Act 1989](#) under which private work and interests are declarable.
- 5.4 Officers should observe the requirements in respect of the acceptance and registration of gifts and hospitality set out in the [Officers Code of Conduct](#).
- 5.5 Officers should (as a general premise) not accept gifts or hospitality. If, however, a degree of hospitality is unavoidable, it should be minimal and its receipt declared as soon as possible.

### **Officer Attendance at Public Meetings**

- 5.6 Officers involved in the processing or determination of regulatory matters who, with their Chief Officer's consent, attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications should take great care to maintain impartiality. They should concentrate on providing factual information and listening to comments and avoid giving views on the merits or otherwise of the proposal.

## **6. Officer Pre-Application and Pre-Decision Making Discussions**

- 6.1 The County Council offers a [pre-application advice service](#) for planning matters. Advice given will be consistent and based upon the relevant law and guidance, development plan and other material considerations. Any views or opinions expressed in pre-application advice are made at officer level in good faith, and to the best of ability, without prejudice to the formal consideration of any planning application. It does not constitute a formal response or decision of the County Council.
- 6.2 The final decision on any planning application will only take place after the County Council has consulted the local community, statutory consultees and any other interested parties as part of the formal planning application process, and taken into account the comments that they may raise.

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<sup>3</sup> Planning officers who are RTPI accredited must act in accordance with the [Royal Town Planning Institute's Code of Professional Conduct](#), or any successor documents. Solicitors advising the Committee will act in accordance with the principles and standards set out in [Solicitors Regulation Authority Handbook](#), or any successor document.

## **7. Membership of the Committee**

- 7.1 Members will be appointed to the Committee in accordance with the County Council's [Constitution](#).
- 7.2 The County Council webpages include information on all [Members of the Committee and their contact details](#).

## **8. Items to be considered by the Committee**

- 8.1 Planning applications will be considered in accordance with the Director of Economy, Transport and Environment's [Scheme of Authorisation and Delegation](#).
- 8.2 Applications for registration of Rights of Way, Commons, and Village Greens which in accordance with the Director of Culture, Communities and Business Service's [Scheme of Authorisation and Delegation](#) require Committee consideration.
- 8.3 Consideration of local development documents and briefs, enforcement cases and all other related matters as required by the County Council's statutory role as (inter alia) a Local Planning Authority, Highway Authority, Commons Registration Authority, and Surveying Authority (for Rights of Way).

## **9. Officer Reports to the Committee**

### **General**

- 9.1 Reports to Committee must be accurate and cover all relevant points.
- 9.2 All reports shall be prepared and published 5 clear working days before the date of the Committee. Reports will be published on [the County Council website](#).
- 9.3 Oral reporting of new information (other than to update an existing report) will only be used on rare occasions when absolutely necessary and will be carefully minuted.

### **Planning Reports**

- 9.4 Where a planning application is subject to a full report, the report will refer to whether the proposal is in conformity (or not) with the relevant national and local policy (development plan) and guidance, together with all other relevant material planning considerations. Where appropriate this will include a full description of the site and any related regulatory background. The report will also summarise the consultations and representations made in respect of the application
- 9.5 All planning reports will have a written recommendation for action/decision. All reasons for approval or refusal must be justified, related to policy considerations, clear and unambiguous. All proposed conditions must meet the tests set out in

### Government guidance.

- 9.6 Update planning reports will be prepared if there are supplementary matters which need to be reported to the Committee following the publication of the Committee reports.
- 9.7 Copies of the update reports will be available to all at the meeting and will be distributed to Members prior to the meeting. All Substitutes will be informed of their publication by the relevant Democratic and Members Services Officer if they are due to sit on the Committee.

### **Rights of Way, Village Green and Commons Registration Reports**

- 9.8 All reports for rights of way applications, town or village green applications or commons registration must:
  - 9.8.1 accurately present all relevant information, setting out the relevant law and including any necessary legal tests;
  - 9.8.2 provide a summary of the application and its supporting evidence, the results of the investigation into the evidence and analysis of that evidence;
  - 9.8.3 have a written statement of whether the application meets all the required legal tests, and a written recommendation, whether the evidence supports the making of an Order (in the case of rights of way) or whether it should be rejected or rights should be registered, in the case of village green applications.

### **10. Development, modification or registration proposals submitted by Members, Officers and County Council**

#### **Member or Officer applications**

- 10.1 Serving Members and Officers should never act as agents for individuals (including a company, group or body) pursuing a planning, rights of way or commons registration matter.
- 10.2 If Members or Officers submit their own proposal to the County Council, they should take no part in its processing. The County Council's Monitoring Officer should be informed of all such proposals as soon as they are submitted.
- 10.3 Proposals submitted by Members or Officers should be reported to the Committee in accordance with the Scheme of Delegation (see Annex C) as main items and not dealt with by Officers under delegated powers. As part of the report the case officer (or such other person as may be appointed to take on this role) should confirm that the application has been processed normally.

#### **County Council Applications (including Reg. 3<sup>4</sup> applications)**

- 10.4 Proposals for the County Council's own development (or a development involving the County Council and another party) should be treated in the same

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<sup>4</sup> Regulation 3 of The Town and Country Planning General Regulations 1992(SI.1992/1492) (as amended)

way as those by private developers and in accordance with national planning policy and associated guidance.

- 10.5 The same administrative planning process, including consultation, should be undertaken in relation to the County Council's own planning applications, and they should be determined against the same policy context (i.e. the development plan and any other material planning considerations).
- 10.6 Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the County Council if the development is permitted. It is important that the Committee is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

## **11. The Committee Process**

### **Determining Planning Matters**

- 11.1 The Committee has given delegated authority to the Director of Economy, Transport and Environment to determine planning applications in certain circumstances and in accordance with the [Scheme of Authorisation and Delegation](#).
- 11.2 In determining any application submitted pursuant to the [Town and Country Planning Act 1990](#) the County Council will follow the Guidelines adopted and attached in Annex B. This will be subject to change from time to time to reflect Government guidance, and changes in statutory law and case law.
- 11.3 Members of the Committee are at liberty to disagree with the recommendation made by the Officers, but upon voting not to adopt the recommendation the reasons for their disagreement must be set out in writing and given to the Legal Adviser at the meeting. The reasons must be justified with reference to any relevant planning policy and/or any relevant material considerations, be based on evidence, and be clear and unambiguous.
- 11.4 The Committee shall have the right to defer consideration of any planning matter at its discretion. The reason for deferral must relate to relevant planning considerations and shall be recorded in the minutes of the Committee meeting.

### **Determining Rights of Way, Village Greens and Common Registration Matters**

- 11.5 The Committee has given delegated authority to the Director of Culture, Communities and Business Services for the determination of Orders made under Section 53 Wildlife and Countryside Act 1981 and various Orders under the Highways Act 1980. However, items will still be brought to Committee if it is considered appropriate by Officers (i.e. if is controversial).
- 11.6 The Committee shall have the right to defer any consideration of any regulatory matter at its discretion. The reason for deferral must relate to the relevant legal tests that are required to be satisfied and shall be recorded in the minutes of

the meeting.

### **Meeting Structure and Order**

- 11.7 To enable the Chair and Vice-Chair to give an effective lead on agenda management in the Committee meeting they should attend a briefing with Officers prior to meeting.
- 11.8 The Chair will call the Committee to order and will then introduce the Committee business. Each item of business will be considered by the Committee as follows:
  - 11.8.1 Chair introduces item;
  - 11.8.2 Members make any necessary declaration in accordance with 11.9 below and if necessary, leave the meeting;
  - 11.8.3 Officer updates/summarises the Report on the item as appropriate;
  - 11.8.4 Chair invites deputations to address the Committee. Members of the public speak first, then the applicant, followed by any local Member not on the Committee who wishes to be heard;
  - 11.8.5 Members of the Committee may ask questions of the deputees;
  - 11.8.6 Members of the Committee may ask the Officer questions;
  - 11.8.7 Officer clarifies matters raised as appropriate;
  - 11.8.8 Committee debates the item;
  - 11.8.9 Officer responds to issues outstanding from the debate and clarifies any matter in the Committee Report in the light of the debate;
  - 11.8.10 The Chair may, for the benefit of the members of the Committee, clarify any issues that have arisen during consideration of the matter;
  - 11.8.11 The vote is taken, including any amendments that may have been moved and seconded by the Committee Members; and
  - 11.8.12 If the Committee fails to approve a recommendation in the Officer's report, immediately afterwards the Chair shall establish the reasons for failing to approve the recommendation. The Chair shall then move an alternative recommendation with the reasons and a vote is taken.
- 11.9 Members on the Committee who have had previous involvement in an application, or a link with the applicant (such as contact with the applicant/objectors, participation in a campaign group, or speaking at a public meeting on the application) will need to consider the requirements of [Code of](#)

Conduct for Members:-

- whether they have a Disclosable Pecuniary Interest;
- whether they have a personal interest;
- whether they are biased or have predetermined the application in the light of the guidance in Section 2 and;

11.9.1 If they have a Disclosable Pecuniary Interest, they must leave the meeting for the duration of the item.

11.9.2 If they have a personal interest, they will need to make the appropriate declarations but may participate to a limited extent, depending on the nature and extent of the interest.

11.10 Conscious of the public arena in which regulatory decisions are made, Members will conduct the business of the Committee in a fair and sensitive manner. The debate on all applications will be confined to the merits of the item under debate.

11.11 Committee Members should not vote or take part in the Committee's discussion on an item unless they have been present to hear the entire debate including the Officer's introduction and the deputations.

11.12 Senior Legal, Rights of Way and Planning Officers should always attend meetings of the Committee to ensure that relevant procedures have been properly followed and relevant issues properly addressed.

11.13 When the Committee meeting has ended, the Chair will announce that the business of the meeting has concluded.

## **12. Deputations to Committee**

### **Applicants, agents, interested parties other than local Members**

12.1 Deputations to the Committee will be permitted in accordance with the following procedure:

12.1.1 The total time permitted for all deputations in any one Committee meeting is one hour;

12.1.2 Deputations may be made by the applicant; their agent; and other interested parties, including elected members of other authorities.

12.1.3 Deputations will be permitted to address the Committee for up to a maximum of 10 minutes.

12.1.4 In the event that there are more than six deputations at any one meeting of the Committee, the time allowed for each deputation shall be reduced equally so as to ensure that the total time permitted for all deputations does not exceed one hour.

12.1.5 If there are a number of interested parties in respect of a particular matter before the Committee, the Chair may request that contributions be restricted to nominated spokespersons.

12.2 Officers shall not be permitted to make a deputation to the Committee unless:

- 12.2.1 It is being made by the Officer in their personal capacity, and not as an Officer of the County Council; or
  - 12.2.2 it is being made by the Officer on behalf of the County Council in its capacity as the applicant or land owner to any matter being considered by the Committee.
- 12.3 Officers of other authorities shall not be permitted to make a deputation to the Committee unless in a personal capacity, and not as an officer of that other authority.
- 12.4 Local members for other authorities are able to make a deputation to the Committee.
- 12.5 The Chair may in their absolute discretion extend the time permitted for deputations.
- 12.6 Where pursuant to 11.6 the Committee has deferred an item that item will be brought back to Committee any deputation in respect of that item will be permitted to address the Committee again in accordance with the above provisions<sup>5</sup>.

### **Local Members wishing to address the Committee**

- 12.7 A local Member who is not a Member of the Committee may address the Committee in their capacity as a locally elected member for a maximum of 10 minutes. This time may be extended at the discretion of the Chair.
- 12.8 A local Member who wishes to exercise their right to address the Committee should not sit with Members of the Committee, nor should they have private conversations with or pass notes to the Committee Members, as this might give the perception of undue influence.
- 12.9 Any time spent by a local Member in addressing the Committee shall not be counted towards the total time permitted for deputations.

### **13. Submission of additional information for the Committee meeting**

- 13.1 Written and visual material may be submitted directly to the Committee by individuals who have made written representations on an application, subject to the following:
  - 13.1.1 such written and visual material must be provided to the relevant Democratic and Members Services Officer in advance of the meeting and;
  - 13.1.2 must be distributed before the Committee meeting commences.
  - 13.1.3 Copies of the material should be provided for all of the Committee Members by the deputee .

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<sup>5</sup> As set out in the County Council's [Standing Orders](#) in the Constitution

Any written and visual material submitted to the Committee other than in accordance with these arrangements may not be considered by the Committee.

## **14. Decision Making by the Committee**

### **General**

- 14.1 In discussing, and then determining an item on the meeting agenda, the Committee will confine itself to the merits of the case.
- 14.2 Members should not vote or take part in the Committee's discussion on an application unless they have been present to hear the entire debate, including the Officer's introduction and the deputations,
- 14.3 In all cases, the reasons for making a final decision should be clear, convincing and supported by relevant evidence. Where Committee Members wish to refuse or grant an application against Officer advice, or impose additional conditions to a permission, the reasons for refusal or the additional conditions must be clearly stated at the time the proposals are moved at the meeting and minuted accordingly.
- 14.4 Where an appeal is made against a decision that was taken contrary to the Officer recommendation, it may be necessary for external consultants to represent the County Council at the appeal hearing, if the Officer's position has been professionally compromised by the decision.

### **Amendments to Recommendations**

- 14.5 Any amendment to a recommendation shall be proposed during the debate, and the proposed amendment including the reasons for the amendment shall be put in writing and delivered to the Chair.
- 14.6 No amendment shall be discussed until delivered to the Chair and the Chair has accepted and read out the proposed amendment and the amendment has been seconded.
- 14.7 The proposer of an amendment may, with the consent of the seconder alter or withdraw an amendment they have proposed.
- 14.8 When necessary the Chair will rule on the appropriateness of any proposed amendments to the recommendation, having taken into account any advice from the Officer and/or Legal Adviser. Any ruling for not proceeding with an amendment will be recorded in the minutes of the meeting.
- 14.9 If more than one amendment to a recommendation is proposed and seconded the amendments shall be discussed in the order in which they were proposed and shall be voted upon in the reverse order they were proposed.
- 14.10 Proposed amendments accepted by the Chair shall be voted on immediately before the vote on the recommendation. If an amendment is voted on and

carried, then the proposed recommendation shall be treated as so amended.

14.11 Where an amendment is voted upon and either carried or lost the Chair shall refuse to put any other amendment that would substantially contradict, override, repeat or re-introduce the subject matter of the previous amendment.

### **Planning – decision making**

14.12 Guidelines for determining planning applications are set out under the [Part III of the Town and Country Planning Act 1990 as amended.](#)

14.13 In the event that amendments to conditions have been requested and agreed at Committee, Officers may request delegated authority from the Chair to agree the final wording in consultation with the Chair and the Vice Chair.

14.14 Officers may request delegated authority from the Chair to prepare the detailed reasons for refusal in consultation with the Chair and the Vice Chair.

14.15 If a resolution is passed contrary to a recommendation of the Officer's report (whether for approval or refusal) a detailed Minute of the Committee's reasons will be made and a copy placed on the application or case file.

14.16 If the Officer's report recommends approval of a departure from the Development Plan, the justification for this should be included in full in the report.

### **Rights of Way, Village Greens, Commons Registration – decision making**

14.17 Approval should be given to make an order or to register village green rights, where the majority of Committee members, having heard all the evidence are satisfied, on the balance of probabilities, that such order should be made, or such rights should be registered, because all the relevant legal tests, as set out in the legislation and/or regulations, have been met.

14.18 An application to make an order or to register village green rights, may be refused where the majority of Committee members, having heard all the evidence are satisfied, on the balance of probabilities, that the application should be refused, because one or more of the relevant legal tests, as set out in the legislation and/or regulations, has not been met.

## **15. Site Visits by the Committee**

15.1 A decision by the Committee to carry out a site inspection should normally only take place where objective decisions cannot be taken without viewing the site and adjoining land. Examples of when site visits might be appropriate would be:

- The proposal represents a departure from the development plan; or
- The proposal is contrary to a specific policy, or raises wider policy issues; or
- The proposal raises particularly unusual factors, for example, it would have a major environmental impact or could lead to loss of jobs and/or

- financial hardship (e.g. enforcement against an existing use; or
- Development that has already been carried out); or
- There is considerable local concern about a proposal, allied to relevant regulatory reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).

- 15.2 The relevant Democratic and Members Services Officer will organise all site visits and all Committee Members and Substitute Members will be informed of the arrangements and will be expected to attend the visit.
- 15.3 The purpose of a site inspection is for Committee Members to gain knowledge of the proposal, the application site, and its relationship to adjacent areas.
- 15.4 Officers will ensure that the purpose of a site visit is set out in the accompanying site visit report. The purpose of the report will be to provide Members with background information on the site and the proposal before the site inspection. The report will not constitute a full decision report and will not discuss nor make any recommendations on the merits of the proposal.
- 15.5 Site inspections will be carried out by Members of the Committee including Substitute Members.
- 15.6 District, Borough or Parish Councillors and members of the public will not be permitted to attend site visits.
- 15.7 The appropriate local Members will be invited to and may attend the site inspection if they wish.
- 15.8 The applicant and/or landowner may be present at site visits to facilitate the entry to the land. Applicants or landowners will not be allowed to take part in the site visit itself unless a factual or clarification question is asked directly by the Chair. The applicant or landowner should not in any way seek to further discuss the proposal with the Committee.
- 15.9 Any subsequent more detailed questions will be followed up by Officers after the site visit.
- 15.10 Officers will record the attendance of Members at each visit, along with apologies given.

## **16. Record of Committee meetings**

- 16.1 A full record of the Committee meeting will be prepared by the relevant Democratic and Members Services Officer. The draft minutes will be available as soon as practical on [the County Council website](#).
- 16.2 The draft minutes will be considered at the next available Committee meeting and will be signed by the Chair once agreed by the Committee. Any agreed changes or amendments to the previous Minutes will be summarised under Item 3 within the Minutes of the current meeting. No changes shall be made to the

previous Minutes themselves.

- 16.3 All decisions in relation to planning applications by the Director of Economy, Transport and Environment or the Committee will be published on the County Council's [web](#) pages.

## **17. Complaints about the Committee**

- 17.1 In order that any complaints about the Committee can be fully investigated, minutes of meetings will be complete and accurate. Minutes of the previous meeting will be signed by the Chair at the next meeting of the Committee

## **18. Freedom of Information/Environmental Information requests related to the Committee**

- 18.1 Requests will be dealt with in accordance with the [Corporate process](#).
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## **ANNEX A**

**Guidelines for rights of way applications under section 53 of the Wildlife and Countryside Act 1981 – Definitive Map Modification Orders** can be found [here](#)

**Guidelines for applications under the Highways Act 1980 – Public Path Orders – diversions, extinguishments, dedications and creations** can be found [here](#)

**Guidelines for village green applications under section 15 of the Commons Act 2006** can be found [here](#)

## **ANNEX B**

### **Guidelines for determining planning applications under the Town and Country Planning Act 1990 (TCPA) as amended**

(i) Section 38(b) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The development plan includes the South East Plan, Hampshire Minerals and Waste Core Strategy – for relevant proposals – other development plan documents and ‘saved’ policies from earlier adopted plans. When an application is being determined where a District Council’s planning policies are relevant then that Council’s development plan policies will also be considered. If the development plan is material to the application then the statutory provision is that the application should be determined in accordance with the development plan unless material considerations indicate otherwise. The emphasis in determining applications is upon a plan led system.

(ii) Other material considerations include policies and proposals in emerging plans. The weight to be attached to emerging development plan document policies depends upon the stage of preparation or review, increasing as successive stages are reached. Once examined as sound, but prior to adoption, the development plan document has significant material weight. However refusal of planning permission on grounds of prematurity, where a development plan document is being prepared or is under review and not yet adopted, will not usually be justifiable. Other local development documents which are also the subject of consultation and objection will be material to the planning decision which is to be taken.

(iii) Material considerations include also national planning guidance in the form National Policy Statements, planning/Mineral/Waste Policy Statements and case law. A ministerial statement may be a material consideration.

(iv) In exceptional circumstances the personal circumstances of an applicant for planning permission may be a material consideration which may outweigh other planning considerations. Where this is the case specific and valid reasons must be given to justify an exception.

(v) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgment for the decision maker having regard to the planning evidence.

(vi) Members of the Committee must thoroughly consider any advice given by a statutory consultee or relevant Government Department, including views expressed by Natural England, Environment Agency and highway authorities.

(vii) Members of the Committee must take into account the views of local residents when determining a planning application, but recognise that opposition to the proposal by local residents cannot be a reason in itself for refusing planning permission unless founded on valid planning reasons, which are supported by substantial evidence..

(viii) Members of the Committee must take into account earlier County Council decisions, appeal decisions in relation to the site, or other related appeal decisions.

(ix) Members of the Committee must not prevent, inhibit or delay development which could reasonably be permitted.

(x) In relation to planning conditions, Members of the Committee must avoid the imposition of conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

## **Material Considerations**

- POLICY

- National
- Regional
- Local

- VIEWS OF STATUTORY CONSULTEES AND ENVIRONMENTAL OFFICERS

- FACTORS ON THE GROUND

| MATERIAL                    | NOT MATERIAL                         |
|-----------------------------|--------------------------------------|
| - visual impact             | - the applicant                      |
| - privacy/overbearing       | - land ownership                     |
| - daylight/sunlight         | - private rights (e.g. access)       |
| - noise, smell etc          | - restrictive covenants              |
| - access/traffic            | - property value                     |
| - health and safety         | - competition                        |
| - ecology                   | - loss of view                       |
| - crime (and fear of)       | - change from previous scheme        |
| - economic impact           | - financial viability                |
| - planning history          | - that it will make something lawful |
| - related decisions         |                                      |
| - cumulative impact         |                                      |
| - personal factors (rarely) |                                      |

## **ANNEX C**

### **Scheme of Delegation for Planning Decisions**

#### County Council matters

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Economy, Transport and Environment is hereby authorised to take decisions under Part III (Control of Development) and Part VII (Enforcement) of the Town and Country Planning Act 1990 (as amended) except when one of the following apply:

- A member of the County Council requests that the decision be made by the Regulatory Committee;
- The Director of Environment considers that the application should be determined by the Regulatory Committee;
- The applicant is a member or an officer of the County Council acting in a private capacity;
- A representation is received requesting to make a ‘deputation’
- A decision may result in a financial compensation claim being made against any local authority.

#### County Council developments

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Environment is hereby authorised to take decisions under Part III (Control of Development) of the Town and Country Planning Act 1990 (as amended) except when one of the following apply:

- A member of the County Council requests that the decision be made by the Regulatory Committee;
- The Director of Environment considers that the application should be determined by the Regulatory Committee;
- The proposal involves the County Council either as land owner or applicant and the scheme is either a major departure from policy not of a minor nature or not of a temporary nature;
- A representation is received requesting to make a ‘deputation’
- A decision may result in a financial compensation claim being made against any local authority.

If it is unclear who should make the decision, the Chairman of the Regulatory Committee will be consulted on who should make the decision.

#### Secondary legislation

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Economy, Transport and Environment is hereby authorised to take all decisions, determinations and assessments (as appropriate) under all planning related secondary legislation, including the Town and Country Planning (Environmental Impact Assessment) (England

and Wales) Regulations 1999 and the Conservation (Natural Habitats Etc) Regulations 1994.

**Monitoring**

All decisions in relation to planning applications by the Director of Economy, Transport and Environment or the Regulatory Committee will be published on the County Council's web site.

<http://www3.hants.gov.uk/planning/mineralsandwaste.htm>

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