

Somerset West and Taunton Council

Audit, Governance and Standards Committee – 12 April 2021

Constitution Update Report

This matter is the responsibility of the Leader of the Council, Cllr Federica Smith-Roberts

Report Author: Amy Tregellas, Governance Manager

1 Executive Summary / Purpose of the Report

- 1.1 To present the Committee with a number of proposed changes to the Constitution.

2 Recommendations

That the Committee recommends to Full Council that:

- 2.1 The number of Members on the Planning Committee is reduced from 15 to 11 from the start of the 2021/22 Municipal Year
- 2.2 A minimum of Five Councillors are trained to be able to substitute for members of their own political group in the absence of a Planning Committee member of their political group.
- 2.3 The number of public speakers for each application going before the Planning Committee is set out as follows:
 - Up to 5 supporters (including the applicant/agent)
 - Up to 5 objectors
 - Town/Parish Council representative
 - County Councillor
 - Ward Member(s)
- 2.4 The Planning Committee Procedure (attached as Appendix A) is adopted and added to the Constitution, as well as being published on the SWT website
- 2.5 Planning Committee meetings should be 4 hours maximum (with the Chair having discretion to conclude an agenda item if part way through), and the procedure rules within the Constitution amended to only allow 2 x 30 minute extensions beyond the original 3 hour meeting.
- 2.6 Regular breaks are introduced for 15 minutes every two hours (to be taken off the duration of the meeting)
- 2.7 Where there is a controversial planning application going before the Planning Committee, that a single item agenda meeting is held.

- 2.8 Site visits for the Planning Committee are introduced for specific reasons only, and follow the guidance set out on the revised Planning Committee Member's Code of Good Practice (Appendix B)
- 2.9 The number of Members on the Licensing Committee is reduced from 15 to 11 from the start of the 2021/22 Municipal Year
- 2.10 That the amended Financial Procedure Rules (Appendix C) are approved

3. Risk Assessment

- 3.1 Failure to have robust governance arrangements in place could impact on the Council's control environment and ability to operate in an economic, efficient and effective manner. This could lead to recommendations being made by Internal and External Audit.

4. Background and Full details of the Report

- 4.1 The purpose of this report is to make some recommendations for change to the Constitution to improve the democratic process.

Planning Committee

- 4.2 The first set of proposed improvements relates to the operation of the Planning Committee. These changes have been discussed with the Planning Advisory Service (PAS) during their recent review.
- 4.3 The Planning Committee can often be the most visible part of the way that decisions within the Council are made, and can impact on public perception. It is therefore important that the Committee operates well.
- 4.4 The Council has had a number of lengthy Planning Committee meetings over the last two years, which has generated negative feedback from Members, officers and the public. Therefore, a number of changes are proposed which, it is anticipated will improve the democratic process and the way that the Committee operates. This in turn will improve public perception of the Planning Committee.

Number of Members on the Committee

- 4.5 Currently there are 15 Members on the Planning Committee. Discussions with PAS endorsed reducing the number of Members on the Planning Committee from 15 to 11.
- 4.6 It is suggested that a reduction in the number of Members would allow for more focused debate, improved accountability and consistency of decision-making, and would give the ability to conduct business with greater efficiency and effectiveness.

- 4.7 Section 101 of the Local Government Act 1972 provides for a local authority to arrange for the discharge of its functions by a committee. The SWT Constitution delegates the powers relating to town and country planning and development control to the Planning Committee. The Committee has made delegations to Officers, which are included within the Planning Committee terms of reference and the scheme of delegation.
- 4.8 It is local choice as to the size of the Planning Committee. The Association of Democratic Services Officers (ADSO) suggest that ‘the size of a Committee can range from very small, say 7 members up to 20 plus members. Best practice would generally err on the side of smaller rather than larger.’ Discussions with PAS concluded that 11 is the optimum number for SWT, with a pool of appropriately trained substitute Members.
- 4.9 ***Recommendations:***
- ***The number of Members on the Planning Committee is reduced from 15 to 11 from the start of the 2021/22 Municipal Year***
 - ***That a minimum of Five Councillors are trained to be able to substitute for members of their own political group in the absence of a Planning Committee member of their political group.***

Public speakers & length of speeches

- 4.10 Currently there are no restrictions on the number of members of the public that are able to speak on planning applications. This can mean that, when an application is contentious there can be a significant number of public speakers, which can up a significant amount of time.
- 4.11 Some examples of meetings where there has been 10 or more public speakers, in the last 12 months are as follows:

Date of meeting	Application details	Public Speakers	Length of meeting
25 February 2021 (virtual meeting)	42/20/0042 – Erection of a foul pumping station at Comeytrowe/Trull 3 applications	Objectors = 28 Supporters = 1 Parish Council= 1 Ward Members = 6 Total = 36	Started at 1pm, finished at 8.20pm Duration – 7 hours & 20 minutes
19 November 2020 (virtual meeting)	36/19/0032, 36/19/0033, 36/19/0034 & 36/19/0035 – agricultural building Lower Huntham Farm, Stoke St Gregory 9 applications	Objectors = 5 Supporters = 4 Parish Council= 1 Ward Members = 0 Total = 10	Started at 1.15pm, finished at 7.25pm Duration – 6 hours & 10 minutes

Date of meeting	Application details	Public Speakers	Length of meeting
16 July 2020 (virtual meeting) 3 applications	3/37/18/015 – 136 dwellings at Cleeve Hill	Objectors = 20 Supporters = 1 Parish Council= 0 Ward Members = 2 Total = 23	Started at 1pm, finished at 6.35pm Duration – 5 hours & 35 minutes

In respect of all other applications considered in the last 12 months, the number of public speakers has been below 10.

- 4.12 The December 2019 Local Government Association (LGA) and PAS guidance '*Probity in Planning: Advice for councillors and officers making planning decisions*' covers the area of public speaking at Planning Committees and states:

'Whether to allow public speaking at a planning committee or not is up to each local authority. Most local planning authorities do allow it and some authorities film and broadcast committee meetings. As a result, public confidence is generally enhanced and direct lobbying may be reduced. The disadvantage is that it can make the meetings longer and sometimes harder to manage. Where public speaking is allowed, clear protocols should be established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors. In the interests of equity, the time allowed for presentations for and against the development should be the same, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the local planning authority in writing.'

- 4.13 Benchmarking of other District Councils in Somerset and Devon found the following, in terms of the number of speakers:

Council	Number of Public Speakers
Somerset West and Taunton Council	No limit
Sedgemoor District Council	7 speakers – one supporter, one objector, Parish Council, Ward Councillor(s), County Councillor, Portfolio Holder and Applicant/Agent
Mendip District Council	Three speakers – one supporter, one objector and Parish/Town Council
South Somerset District Council	Town/Parish Council, Objectors, Supporters, Applicant/Agent and District Ward Member. No clear limit on number of speakers but it

Council	Number of Public Speakers
	does say that where there are a number of people wishing to speak they are encouraged to choose one spokesperson
Mid Devon District Council	One Objector, one from applicant/ agent/ supporter, Parish Council, Ward Member(s)
East Devon District Council	Major applications – 5 supporters, 5 objectors, the agent/applicant and Parish/Town Council Minor/Other applications – 2 supporters, 2 objectors, the agent/applicant and Parish/Town Council The agenda lists whether the application is Major or minor/other
Exeter City Council	One objector, one supporter, agent/applicant
North Devon District Council	Up to six supporters, up to six objectors, Parish/Town Council, Applicant/Agent
Torridge District Council	Two objectors, Two supporters (including the agent/applicant) and Town/Parish Council
Teignbridge District Council	Major applications – two objectors and two supporters Other applications – one objector and one supporter
South Hams District Council	One objector, one supporter & Town/Parish Council If there is more than one supporter or objector then only one person can be chosen as the spokesperson
West Devon District Council	One supporter and one objector

For all other District Councils in Somerset and Devon, they have a limit on the number of public speakers.

- 4.14 It is suggested that limiting the number of public speakers for each application going before the Planning Committee would give the ability to conduct business with greater efficiency and effectiveness and reduce the length of meetings, which is beneficial for Members, officers and members of the public. It is not proposed to change the length of time for each speaker and that will remain as 3 minutes.

4.15 **Recommendations:**

- **The number of public speakers for each application going before the Planning Committee is set out as follows:**
 - Up to 5 supporters (including the applicant/agent)
 - Up to 5 objectors
 - Town/Parish Council representative
 - County Councillor
 - Ward Member(s)
- **The Planning Committee Procedure (attached as Appendix A) is adopted and added to the Constitution, as well as being published on the SWT website**

Length of meetings

4.16 As alluded to in earlier sections of this report, the length of the Planning Committee can often exceed 4 hours. Analysis of the 32 Planning Committee meetings that have taken place since SWT came into being on 1 April 2019, showed that 15 exceeded 4 hours, as follows:

Date	Start/Finish times	Duration
25 February 2021	1pm to 8.20pm	7 hours & 20 mins
19 November 2020	1.15pm to 7.25pm	6 hours & 10 mins
20 August 2020	1pm to 6.58pm	5 hours & 58 mins
6 August 2020	1pm to 5.39pm	4 hours & 39 mins
23 July 2020	1pm to 5.15pm	4 hours & 15 mins
16 July 2020	1pm to 6.35pm	5 hours & 35 mins
9 July 2020	1pm to 5.45pm	4 hours & 45 mins
12 March 2020	1pm to 5.24pm	4 hours & 24 mins
30 January 2020	1pm to 8.55pm	7 hours & 55 mins
5 December 2019	1pm to 5.45pm	4 hours & 45 mins
24 October 2019	1.15pm to 5.30pm	4 hours & 15 mins
3 October 2019	1pm to 5.44pm	4 hours & 44 mins
1 August 2019	1pm to 5.45pm	4 hours & 45 mins
11 July 2019	1pm to 5.10pm	4 hours & 10 mins
30 May 2019	1.10pm to 7.30pm	6 hours & 20 mins

In 15 out of 32 (47%) cases, the Planning Committee meetings have exceeded 4 hours. In 6 out of 32 (19%) cases, the Planning Committee exceeded 5 hours.

4.17 Long meetings run the risk of the focus and attention span of the participants being effected, and this risk increases the longer the meeting goes on for.

4.18 Council Procedure Rule 28, within the Constitution, states 'A meeting of Full Council or other committees including the Scrutiny Committee shall not exceed 3 hours in duration' (this excludes any time for comfort breaks). However, Procedure Rule 29 does allow the meeting to be extended for 30 minutes, once during the meeting. Procedure Rule 29.3 states 'However, the

Chair of the Council, Chair of Planning Committee or Chair of the Licensing Committee may decide otherwise in respect of the meeting they are chairing. This will generally only occur in exceptional circumstances.'

4.19 It is suggested that limiting the length of the Planning Committee meetings would focus the debate and give the ability to conduct business with greater efficiency and effectiveness, which is beneficial for Members, officers and members of the public. It is also suggested that for applications that are controversial in nature, and likely to attract a lot of public interest, that single agenda item meetings are held rather than other items being added to the agenda.

4.20 **Recommendations:**

- ***Planning Committee meetings should be 4 hours maximum (with the Chair having discretion to conclude an agenda item if part way through), and the procedure rules within the Constitution amended to only allow 2 x 30 minute extensions.***
- ***Regular breaks are introduced for 15 minutes every two hours (to be taken off the duration of the meeting)***
- ***Where there is a controversial planning application going before the Planning Committee, that a single agenda item meeting is held.***

Site Visits

4.21 The Planning Committee Member's Code of Good Practice within the Constitution, states that 'Whilst it is not the practice for the Planning Committee to make site visits as a Committee, **do** make a personal visit to an application site if you do not feel you will be able to come to a fair decision without seeing the site. Always try to view the land or building concerned from a public vantage point, for example an adjoining road or a public footpath.'

4.22 This approach often raises challenge from members of the public, so it is suggested that site visits are introduced following the PAS guidance, which states 'Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.'

4.23 **Recommendations:**

- ***Site visits for the Planning Committee are introduced for specific reasons only and follow the guidance set out on the revised Planning Committee Member's Code of Good Practice (Appendix B)***

Licensing Committee

4.24 The second Committee to consider in terms of a proposed improvement relates to the operation of the Licensing Committee. As with Planning Committee, the Licensing Committee is classed as a Regulatory Committee. Therefore, it makes sense to mirror the number of Members on the

Committee to match the proposed change to the Planning Committee, i.e. reduce the number from 15 to 11.

4.25 When considering the size of the Licensing Committee, benchmarking against a number of other District Councils in Somerset and Devon, the numbers vary between 10 and 15 Members, with the average number being 12 Members:

- Sedgemoor District Council – 15 Members
- Mendip District Council – 14 Members
- South Somerset District Council – 15 Members
- Torridge District Council – 10 Members
- Teignbridge District Council – 11 Members
- South Hams District Council – 12 Members
- West Devon District Council – 10 Members
- Mid Devon District Council – 12 Members
- Average = 12.3 Members

4.26 It is proposed that no change is made to the process and procedure relating to Licensing Sub-Committees and that the number of Members remains at 3

4.27 **Recommendation:**

- ***The number of Members on the Licensing Committee is reduced from 15 to 11 from the start of the 2021/22 Municipal Year***

Audit, Governance and Standards Committee

4.28 The Council Governance Arrangements Working Group (CGAWG) Report is recommending that the Audit, Governance and Standards Committee is split into two separate Committees:

- Audit and Governance Committee
- Standards Committee

The recommendations to make this change are included in the CGAWG report.

4.29 The CGAWG report is also suggesting that the number of Members on each Committee is 11 for the Audit and Governance Committee and 9 for the Standards Committee. This is in line with the numbers that other local Councils have.

The recommendations to make this change are included in the CGAWG report.

4.30 In terms of frequency of meetings, it is anticipated that the Audit and Governance Committee will follow the current Audit, Governance and Standards Committee timetable. However, it is suggested that the Standards Committee meets as and when needed.

5. Links to Corporate Strategy

5.1 Having a robust, effective and efficient governance framework in place is a

fundamental element of being a ‘well managed’ council and avoiding recommendations from Internal and External Auditors.

6. Finance / Resource Implications

- 6.1 None arising from this report

7. Legal Implications

- 7.1 The changes set out in the report are at the local discretion of the Council and do not breach legislation or have any legal implications

8. Climate and Sustainability Implications

- 8.1 None arising from this report

9. Safeguarding and/or Community Safety Implications

- 9.1 None arising from this report

10. Equality and Diversity Implications

- 10.1 None arising from this report

11. Social Value Implications

- 11.1 None arising from this report

12. Partnership Implications

- 12.1 None arising from this report

13. Health and Wellbeing Implications

- 13.1 None arising from this report

14. Asset Management Implications

- 14.1 None arising from this report

15. Data Protection Implications

- 15.1 None arising from this report

16. Consultation Implications

- 16.1 None arising from this report

Democratic Path:

- **Audit, Governance and Standards Committee – Yes**
- **Cabinet/Executive – No**
- **Full Council – Yes**

Reporting Frequency: Annually

List of Appendices (delete if not applicable)

Appendix A	Protocol on Speaking at Planning Committee
Appendix B	Planning Committee Members Code of Good Practice

Contact Officers

Name	Amy Tregellas
Direct Dial	01823 785034
Email	a.tregellas@somersetwestandtaunton.gov.uk

Appendix A

Planning Committee Procedure

This document sets out the detailed procedures of the Planning Committee that are in addition to the council's procedure rules within the Constitution, as well as giving answers to some frequently asked questions from the public regarding planning procedure.

The Planning Committee consists of 11 Councillors, drawn from each of the political groups within the Council. Members of the Executive are not eligible to sit on the Planning Committee

Prior to the Meeting

How do I know the application I am interested in is going to committee?

If an application is to be submitted to committee for consideration, you will be notified of this about a week before the meeting, if you are an applicant or their agent, or have commented on the application.

Where a proposal meets any of the following criteria, it shall be reserved to the Planning Committee for determination:

Criterion 1: In the opinion of the Principal Planner or the Chair of the Planning Committee, the application is considered to be of a significant, controversial or sensitive nature.

Criterion 2: The application is from an elected Councillor (or partner thereof) or member of Council staff (or partner thereof) and is recommended for approval.

Criterion 3: The application is accompanied by an Environmental Impact Statement (EIA).

Criterion 4: The application is a significant departure from the Council's statutory Development Plan and is recommended for approval.

Criterion 5: Where there are conflicting views (giving clear planning reasons) from a Town/Parish Council or a Parish Meeting or a Ward Member as well as from not less than 4 individuals.

Any application which is not referred to Committee by virtue of the criteria listed above, but where conflicting representations have been received (including from statutory consultees), is referred to the Chair or Vice Chair of the Planning Committee before a decision is made. The Chair or Vice Chair may decide to refer any such application to the Planning Committee.

Can I see a copy of the committee agenda/officer's report?

Copies of the agendas for Planning Committee are published at least five clear working days before the meeting. Agendas can be accessed via the Council's website via the following link:

<https://democracy.somersetwestandtaunton.gov.uk/ieDocHome.aspx>

Registering to Speak at Planning Committee

If you would like to speak at a planning meeting, you will need to submit your request to a member of the Governance Team in advance of the meeting.

You can request to speak at a meeting by telephoning [01823 219735](tel:01823219735) or emailing your full name, application number and whether you are in support for or against the application along with your statement to the Governance Team using governance@somersetwestandtaunton.gov.uk

Any requests need to be received by 4pm on the day that provides 2 clear working days before the meeting (excluding the day of the meeting itself). For example, if the meeting is due to take place on a Thursday, requests need to be received by 4pm on the Monday prior to the meeting.

Please note that only written representations received by this date and time can be published and taken into consideration.

The Governance and Democracy Case Manager will take the details of your statement and will distribute them to the Committee prior to the meeting.

What can I include in my public statement?

Speakers should restrict their comments to material planning considerations only, examples are listed below:

- Government guidance and Local Plan Policies
- The Local Plan
- Highway safety and impact of traffic in the environment
- Design, appearance and layout – visual impact
- Residential amenity – privacy, loss of light, overbearing, noise, smells
- Conservation of buildings, trees and open land
- Need to safeguard the countryside or protected species of plant or animal
- The need for development
- Previous planning history of the site
- Case Law
- Appeal decisions

The following are examples of matters which are not material planning considerations:

- Private property rights such as covenants
- The applicant/developer's identity, morals, motives or past record

- Effect on the value of your property
- The fact that development has commenced without the benefit of planning permission
- Loss of a private view
- Private neighbour disputes.

Temporary measures during the Coronavirus Pandemic

Due to the Government guidance on measures to reduce the transmission of coronavirus (COVID-19), we will hold meetings in a virtual manner which will be live webcast on our website. Members of the public who would normally register to speak will be asked to provide a written statement instead, the statement will then be read out by the Governance and Democracy Case Manager after the Planning Officer has presented their report.

The link to each webcast will be available on the [planning meeting](#) page, but you can also access them on the [Somerset West and Taunton webcasting](#) website.

The Meeting

Are members of the public allowed to attend and/or speak at Planning Committee meetings?

All meetings of the Planning Committee are open to the public. At the moment, meetings are held virtually and not in the Council chamber due to the Coronavirus Pandemic.

Public Question Time is available at the beginning of the meeting for those present to ask questions about any item of the agenda, or to speak briefly by way of background or introduction to those questions, including planning applications.

Members of the public, Town/Parish Councils and Ward Members also have a right to speak at meetings of the committee during the consideration of planning applications.

How is each application considered at Committee?

Each application will be considered as follows:

- A report will be included on the agenda for all parties to have read prior to the meeting.
- The Chairman will announce the item to be considered, reading out the application number and description of the application.
- The Planning Officer will make a presentation on each application. This will be a summary of main points only as full details will be incorporated in the written report. A presentation will be used for visual presentations of plans, drawings,

layouts, elevations and other illustrative material which was not included in the report (this could also include any late or updated information).

- The officer recommendation on each application along with any conditions will be stated within the report
- The Chairman will then call on the registered speakers to speak for a maximum of 3 minutes each, in the following order:
 - Objector(s) – up to a maximum of 5 speakers (3 minutes each),
 - Supporter(s) – up to a maximum of 5 speakers, including the Applicant/agent (3 minutes each),
 - Town or Parish Council representative – 1 speaker (3 minutes);
 - Ward Member(s) (3 minutes each).

In the event of more than one objector or supporter wishing to speak, a spokesperson should be agreed between the objectors or applicant/supporters. If the objectors or applicant/supporters cannot reach agreement about who will speak, then the person who registered first will be given the opportunity to speak.

- Through the Chairman, Members of the Planning Committee may ask questions of any person who has spoken. Further, a Ward Member who has spoken may raise through the Chairman a point of order in order to correct a statement or error of fact which has been made during the course of the debate.
- At the conclusion of the public speakers, the Chairman will invite questions of fact/clarification from members of the committee to officers but no submission of views will be given at this stage. Officers will respond to queries with factual information.
- When all information has been received, the members of the committee will discuss and debate the application.
- The Committee will then take a decision on the application. This will be made by a councillor making a proposal which will need to be seconded before it can be voted on
- Once a proposal has been proposed and seconded the Chairman will make it clear upon which motion/amendment the vote is to be taken and ask for members to vote either in favour or against the application (individual votes will not be recorded unless specifically requested by Members of the committee). The Committee Clerk will count the votes so that everyone is aware of the result.
- The Chairman or Committee Clerk will state the decision of the committee on the application following the vote.

Is the meeting recorded?

All meetings of the committee are webcast meaning that members of the public can watch the meeting live or watch the recording at a time convenient to them, following the meeting.

You can find the link to the webcasting on the Council website and under each Planning Committee agenda. Any problems please contact governance@somersetwestandtaunton.gov.uk

The recordings will be available on the website for a period of 6 months.

What will be the order of items at the committee meeting?

The applications will normally be considered in agenda order. However, the Chairman may however at his/her discretion alter the running order.

Planning Committee Members' Code of Good Practice

1. Overview

The aim of this Code of Good Practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest to facilitate place-shaping and community planning as laid out in the Council's Development Plan.

Your role as a member of the Local Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Councillors at **all times** when involving themselves in the planning process. (This includes decision-making meetings of the Local Planning Authority or when involved on less formal occasions, such as meetings with Officers or the public and consultative meetings.) It applies as equally to planning enforcement matters or site-specific policy issues as it does to planning applications.

Councillors are reminded that this document is only for general guidance, as it cannot cover all eventualities. It is the individual Councillor's responsibility to act correctly under all circumstances. If you have any doubts about the application of this code to your own circumstances you should seek advice early from the Monitoring Officer or one of the Council's Solicitors, and preferably well before any meeting takes place.

2. Background

Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

Planning decisions involve balancing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The planning process is complex and sometimes highly emotive. It is essential that members of the Planning Committee conduct themselves correctly to avoid

complaints which could have personal consequences and may, in some cases, involve the Council in substantial costs.

For many members of the public, the Planning Committee is the most visible operation of the Council, and one that can affect their lives most directly. Some stand to gain substantial financial benefit from the outcome of a Planning Committee decision.

This Code of Good Practice has therefore been prepared to provide members with additional guidance on their role on the Planning Committee.

3. Roles of Councillors and Officers

The planning system works best when the roles and responsibilities of the many participants essential to its effective operation are clearly understood. It is vital that elected Councillors understand their role and the context and constraints in which they operate.

Councillors

Councillors on the Planning Committee sit as a non-judicial body, but act in a semi-judicial capacity, representative of the whole local community in making decisions on planning applications. They must, therefore:

- a) Act fairly, openly and apolitically;
- b) Approach each planning application with an open mind, avoiding pre-conceived opinions;
- c) Carefully weigh up all relevant issues;
- d) Determine each application on its individual planning merits;
- e) Avoid undue contact with interested parties; and
- f) Ensure that the reasons for their decisions are clearly stated.

The above role applies also to Councillors who are nominated substitutes on the Planning Committee. Where a Councillor, who is neither a member of, nor a substitute on the Planning Committee, attends a meeting of the Committee, he or she is also under a duty to act fairly and openly and avoid any actions which might give rise to an impression of bias or undue influence.

Role of Planning Officers

Planning Officers advise Councillors on planning policy and planning applications. They will:

- a) Provide professional, objective and comprehensive advice;
- b) Provide a clear and accurate analysis of the issues;
- c) Advise on the Development Plan and other material considerations;
- d) Give a clear recommendation; and

- e) Implement the Committee's/Council's decisions (including those made by Officers under powers delegated to them).

4. Members' Code of Conduct

All Councillors must follow the rules laid out in the Members' Code of Conduct to ensure they are, and are seen to be, fair and impartial in their work as a Councillor.

Relationship to the Members' Code of Conduct

Always apply the rules in the Members' Code of Conduct first, which must be complied with. The Members' Code of Conduct can be found in your copy of the Council's Constitution.

Do then apply the rules in this Planning Code of Good Practice, which seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.

If you do not abide by this Code of Good Practice, you may put the Council at risk of proceedings on the legality or maladministration of the related decision, and yourself at risk of being named in a report made to the Audit, Governance and Standards Committee of the Council.

5. Development Proposals and Interests Under the Councillors' Code of Conduct

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with Officers and other members. Disclose your interest prior to the commencement of discussion on the particular matter in which you have an interest.

Do then act accordingly.

Where your interest is either a disclosable pecuniary interest or a personal and prejudicial interest.

Do not participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Local Planning Authority.

Do ask another ward member to represent the views of the ward. If this is not possible then it is recommended that you put those views in writing to the Committee.

Do not get involved in the processing of the application.

Do not seek or accept any preferential treatment or place yourself in a position that could give the public the impression you are receiving preferential treatment. In other words, if you have a personal and prejudicial interest in a planning application, you should not seek to use your position as a Councillor to discuss the matter with Officers and other Councillors when a normal member of the public would not have the same opportunity to do so.

Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate Officer (either in person or in writing), this Code of Good Practice places greater limitations on you in representing that proposal than would apply to a normal member of the public.

For example, where you have a personal and prejudicial interest in an application to be put before the Planning Committee, you would have to withdraw from the Committee Room whilst the meeting considers it, whereas an ordinary member of the public would be allowed up to the three minutes to address the Committee and to observe the meeting's consideration of the application. You are permitted to make a statement as per a member of the public, should you choose to do so, but then must withdraw from the meeting. If you declare a disclosable pecuniary interest, then you would also forego the right to make a statement as a member of the public and you must take no part in the proceedings whatsoever.

Do also be aware that, where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal; or
- you have been appointed or nominated to an outside body or organisation by the Council as its representative; or
- you are a trustee or company director of the body submitting the proposal and were appointed by the Council;

you should always disclose a prejudicial as well as personal interest and withdraw from the meeting of the Planning Committee.

Do consider yourself able to take part in the debate on an application when acting as part of a consultee body (where, for example, you are also a member of the town/parish Council or you are both a Somerset West and Taunton Councillor and a Somerset County Councillor), provided:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;

- you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward, town or parish, as and when it comes before the Planning Committee and you hear **all** of the relevant information; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee;
- you disclose the personal interest regarding your membership or role when the Planning Committee comes to consider the proposal;
- **Do** notify the Monitoring Officer in writing of your own applications, and those of relatives and close associates, and note that:
 - notification to the Monitoring Officer should be made no later than submission of the application;
 - the proposal will be reported to the Planning Committee where the Officers have recommended the application for approval; and
 - it is advisable that you employ an agent to act on your behalf on the proposal in dealing with Officers and any public speaking at the Planning Committee.

6. Fettering Discretion in the Planning Process

Before considering this section, it will be helpful to the reader to refer to the broad definition of the term ‘fettering a discretion’ which is set out at Annex A.

Do not fetter your discretion and therefore your ability to participate in the decision-making process by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to its formal consideration at the Planning Committee without having heard the full discussion at the meeting.

Fettering your discretion in this way and then taking part in the decision will put the Council at risk of:

- a) Finding of maladministration; and
- b) Legal proceedings on the grounds of there being a danger of bias or pre-determination or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

Do be aware that you are likely to be considered to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. Through such significant personal involvement, you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.

Do not speak and vote on a proposal where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.

Do explain that you do not intend to speak and vote because you have, or you could reasonably be perceived as having, judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes of the meeting.

Do take the opportunity to exercise your separate speaking rights as a ward member where you have represented your views or those of local electors and fettered your discretion, but do not have a personal and prejudicial interest.

Where you do:

- advise the Chair that you wish to speak in this capacity before commencement of the item;
- remove yourself from the member seating area for the duration of that item; and
- ensure that your actions are recorded.

7. Contact with Applicants, Developers and Objectors

Do refer those who approach you for planning, procedural or technical advice to Officers.

Do not agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should never seek to arrange that meeting yourself but should request the Principal Planner to organise it. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the Local Planning Authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Planning Committee.

Always:

- follow the rules on lobbying (see below);

- consider whether or not it would be prudent in the circumstances to make notes when contacted; and
- report to the Principal Planner any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants or developers:

Do not attend a planning presentation unless an Officer is present and/or it has been organised by Officers.

Do ask relevant questions for the purposes of clarifying your understanding of the proposals.

Do remember that the presentation is not part of the formal process of debate and determination of any subsequent application. This will be carried out by the Planning Committee.

Do be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Councillors might vote.

8. Lobbying of Councillors

Discussions between a potential applicant and a Council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. With the recognition of the need to allow and encourage Councillors to be champions of their local communities it is recognised that Councillor engagement in pre-application discussions on major development is necessary to allow Councillors to fulfil this role.

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it would prejudice your impartiality, and therefore your ability to participate in the Planning Committee's decision-making, to express an intention to vote one way or another or take such a firm point of view that it amounts to the same thing.

Do remember that your overriding duty is to the whole community not just to the people in your ward. You therefore need to make decisions impartially, that should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Do not accept gifts or hospitality from any person involved in, or affected by, a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Council's rules on gifts and hospitality.

Do copy or pass on any lobbying correspondence you receive to the Principal Planner at the earliest opportunity.

Do promptly refer to the Principal Planner any offers made to you of planning gain or constraint of development, through a proposed S106 Planning Agreement, or otherwise.

Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality) who will, in turn, advise the appropriate Officers to follow the matter up.

Do note that, unless you have a disclosable pecuniary interest or a personal and prejudicial interest, you will not have fettered your discretion or breached this Planning Code of Good Practice through:

- listening to, or receiving viewpoints from residents or other interested parties;
- making comments to residents, interested parties, other members or appropriate Officers, provided they do not consist of, or amount to, pre-judging seeking information through appropriate channels;
- being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard **all** the facts and listened to the debate; or
- being a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard **all** the facts and listened to the debate.

9. Lobbying by Councillors

Do not become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and are likely to have a personal and prejudicial interest requiring your withdrawal from any Planning Committee meeting where the application is discussed.

Do join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local Civic Society. However, you will need to disclose a personal interest where that organisation has made representations on a particular planning application and make it clear to that organisation (if approached by them) and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal.

Do not lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Do not decide or discuss how to vote on any planning application at any sort of political group meeting or lobby any other Councillor to do so. Political Group Meetings should **never** dictate how Councillors should vote on a planning issue. Any vote taken on political lines will leave the Council open to challenge as set out in section 4 of this code.

10. Site Visits

Whilst it is not standard practice for the Planning Committee to make site visits as a Committee, they can be useful in exceptional circumstances. Site visits are for observing the site and gaining a better understanding of the issues. Visits made by committee members, with officer assistance, are normally the most fair and equitable approach. They should not be used as a lobbying opportunity by objectors or supporters. This should be made clear to any members of the public who are there.

The Local Government Association (LGA) and Planning Advisory Service (PAS) guidance titled '*Probity in Planning: Advice for Councillors and officers making planning decisions*' suggests that a site visit is only necessary if:

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

The guidance also gives the following helpful points:

- visits should only be used where the benefit is clear and substantial. Officers will have visited the site and assessed the scheme against policies and material considerations already

- the purpose, format and conduct should be clear at the outset and adhered to throughout the visit
- where a site visit can be ‘triggered’ by a request from the ward councillor, the ‘substantial benefit’ test should still apply
- a record should be kept of the reasons why a site visit is called.

The need for site visits

It is important for the Planning Committee to have a clear rationale for undertaking organised site visits in connection with planning applications and that any visits are conducted properly and consistently. The purpose of a site visit is for Councillors to gain knowledge of the development proposal, the application site and its surroundings.

A decision by a Planning Committee to carry out a site inspection should normally only be taken where the impact of the proposed development is difficult to assess from the plans and any supporting information submitted by the applicant, or additional material provided by officers. Site visits cause delay and additional costs, and should only be carried out where Councillors believe a site visit is necessary to make such an assessment. Reasons should be given for the decision to make a site visit.

Who visits?

The Committee as a whole may undertake a site visit which if possible should be scheduled to take place in advance of the Planning Committee meeting at which the application will be discussed.

If the site visit is open to all members of the committee then those members who are not able to attend should carefully consider whether they will be in receipt of all relevant facts when the matter comes back before Committee for determination. Technical/professional consultees may exceptionally be asked to attend a site visit where it is anticipated that their presence on site will assist the Working Group or Committee gain knowledge of the proposal. If technical/professional consultees are requested to attend then reasons for that decision should be recorded. Procedure on Site

A detailed explanation of the proposals, and a summary of the officers' report and recommendations, will be made by the planning officer. Councillors will then be given the opportunity to ask questions and to view the site and surroundings from all relevant vantage points.

Site visits will normally involve Planning Committee members and officers, except for any consultee whose attendance has been specifically requested by the Planning Committee (e.g. the County Highway Authority or an Environmental Health Officer) to assist their understanding of the proposals.

Councillors should keep together during site visits and not allow themselves to be addressed separately. No decisions are made at site visits although observations may be made to the Committee. An officer will be present to take a written note of the key planning issues and information obtained from the site visit, to be reported to the subsequent meeting of the Planning Committee.

The Planning Officer and the Monitoring Officer will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site inspection together with the format and conduct of the inspection, so that applicants/agents and interested parties are aware of it.

Informal Site Visits

Where a site visit by the Planning Committee is not appropriate, there are advantages in Councillors making their own individual site visits to gain knowledge of the development proposal, the application site and its surroundings.

Do make a personal visit to an application site if you do not feel you will be able to come to a fair decision without seeing the site. Always try to view the land or building concerned from a public vantage point, for example an adjoining road or a public footpath.

Do ensure that any particular observations you make during the site visit, which are not referred to either in the Principal Planner report or the visual presentation, are reported back to the Planning Committee, so that all Councillors have the same information.

Do ensure that you treat the site visit only as an opportunity to observe the site to clarify particular issues. Wherever possible, make the visit unaccompanied.

Do not hear representations from any other party during the visit. Where you are approached by the applicant, agent or a third party, advise them that they should make representations in writing to the Local Planning Authority and direct them to the Principal Planner.

Do not express opinions or views to anyone.

If you need to enter the site the subject of a planning proposal, **do not** do so without the consent of the owner or occupier and **do not** do so in circumstances where you believe you will not be able to abide by the Good Practice Rules as this can lead to the perception that the councillor is no longer impartial.

Do not accept an invitation to be shown around by either the applicant, agent or a third party unless you are accompanied by one of the Council's Planning Officers.

11. Public Speaking at Meetings

Do not allow members of the public to communicate with you during the Planning Committee's proceedings (orally or in writing) other than through the scheme for public speaking, as this may give the appearance of bias.

Do ensure that you comply with the Council's procedures in respect of public speaking.

12. Officers

Do not put pressure on Officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Principal Planner which may be incorporated into any Planning Committee report).

If you wish to discuss a particular planning proposal outside of any arranged meeting, **do** try to contact the relevant Case Officer or, in his/her absence, another Planning Officer or the Principal Planner.

Do recognise and respect that Officers involved in the processing and determination of planning matters must act in accordance not only with the Council's Code of Conduct for Employees but also their professional codes of conduct (primarily the Royal Town Planning Institute's Code of Professional Conduct). As a result, Planning Officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

13. Decision-Making

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do comply with the requirements of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or, that there is simply insufficient information before

you, request that further information. If necessary, defer a decision on an application for planning permission or refuse it.

Do not vote or take part in the meeting's discussion on an application unless you have been present to hear the entire debate, including the Officers' introduction to, or visual presentation in respect of, the matter.

Do have recorded the reasons for the Planning Committee's decision to defer any proposal.

Do make sure that if you are proposing, seconding or supporting a decision contrary to Officer recommendations or the Development Plan, that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

14. Training

Do not participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.

Annex A

A Broad Definition of the Term 'Fettering a Discretion'

Fettering a Discretion is one of those unfriendly and legalistic phrases which derive from the statutory basis which underlies all local government decision-making. Unfortunately, it is quite difficult to replace, or to translate into normal English. So, here's a broad definition instead:

It means that where a decision-making body (like a Council, or a Committee or an Executive Councillor) is obliged to exercise some discretionary power under statute, then it must **exercise** that discretion fairly, at the right time and only after taking all proper factors into account. (Deciding upon the fate of a planning application is a good example of such a discretion.)

If, instead of keeping that essential open mind, it can be seen that it (or its members) have already **committed** themselves, in one direction or another, **before the moment when that discretion must be exercised** (i.e. **after** all material factors have been considered) then they are said to have 'fettered their discretion'.

The consequence of such pre-judging can be dire. In a bad case, the validity of the decision could be challenged in a number of ways, including through the courts, with painful and expensive consequences for all concerned, including the Council itself, and for individual Councillors who have left themselves open to this criticism