

MODERN LOCAL GOVERNMENT GROUP – 4TH JULY 2005

REPORT OF THE DEVELOPMENT CONTROL PROTOCOL REVIEW GROUP

Status: For Decision

Recommendation:

- (a) That the Development Control Protocol, as attached to report and including any comments, be recommended to Council for approval;
 - (b) That a review of the protocol, as approved by Council, be undertaken in six months time; and
 - (c) That Member/Officer Development Control Workshops be undertaken every three months.
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Introduction

- 1 The Development Control Review Group, comprising of Cllrs. Allen, Baker, Mrs. Broomby, Mrs. Dawson, Dean (Chairman), Howes, Mrs. Morris, Quaife and Walshe, was set up to consider:
- (A) Members involvement in the life cycle of a planning application;
 - (B) The protocol on procedure at Development Control Committee meetings and site meetings; and
 - (C) the amended protocol 'Proposals Contrary to Officer Advice' – Modern Local Government Group on 2nd September 2004.

The Group met on eight occasions.

Background

- 2 The Group was set up following concerns by Members on the way various aspects of the planning process were dealt with and the communication between Officers and Members over applications. It considered the life cycle of a planning application and has produced a Development Control Protocol for use by Officers and Members.
- 3 The Group noted that the recent turnover of professional planners, service reorganisation and rising application numbers had placed the development control service under increased pressure. It also recognised that government-imposed pressure to meet planning targets is of major importance; not just for the standing of the Council, but also for the planning performance grant.
- 4 The public are entitled to expect high standards of conduct and probity by all persons holding public office and, in particular, when dealing with planning matters; only material planning considerations should be taken into account. The process should leave no grounds for suggesting with any justification that a decision has been partial, biased or not well founded in any way.

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- 5 The importance of two-way communication between Planning Officers and local Members was recognised and case Officers were to be encouraged to have more informal discussions with local Members and vice versa. However, Officers and local Members alike must act responsibly to minimise the potential for needless delays.
- 6 It was recognised that some Members felt pressurised by Officers who wish for an application to be decided by delegated powers. Similarly, some Members felt that they cannot go against the views of their town/parish council and request that Development Control Committee considered applications as a result.
- 7 The Group noted that the new Public Access System (PAS) was now 'live' and Members emphasised that the Planning portal service must be kept up to date.
- 8 A consistent Development Control report format was suggested.
- 9 The Review Group requested that where possible, consistency be adhered to with regard to case Officers completing the applications they were responsible for. It was accepted that if a case Officer left the authority then another Officer would take up the workload. However, it was felt that in the case of a staff reorganisation, the case Officers should be allowed to complete cases already started.
- 10 Members felt that there was a lack of balance in Officer reports and that Officers were too selective with information included. There was also a lack of consistency in the justification and weighting given to certain policies.
- 11 It was noted that the bullet point summary of objections received concerning an application included in Officers' reports were not always accurate. Members did not understand why letters of support were reproduced in full in the appendices of the reports and letters of objections were summarised within the report. An impression of bias may be given.
- 12 Where a strong difference of views arises on a planning application between a Planning Officer and a local Member then the case should be passed to a senior Officer to deal with.
- 13 Where a local Member felt sufficiently strongly that an application should be submitted to Committee, the Group felt that a local Member from the ward concerned should always attend when the application is dealt with.
- 14 It was suggested that if a Member's view was contrary to the Officer's recommendation then the Member should contact the appropriate Planning Officer before the Committee meeting to discuss their differing point of view. It is recognised that not all applications have a black and white solution and if a Member contacts an Officer then the Officer should make every effort to provide the Member with reasons for refusal (or conditions for approval) or conditions that would make the application more acceptable. It was however recognised that this may not actually work in practice.
- 15 The Group noted that the number of decisions overturned at appeal is less than those upheld and that only a very small minority of decisions award costs against the Council. Accordingly it was felt that Members and Officers should avoid

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referring to the possibility of costs when determining applications. The question of costs was not a material planning matter. However Members considered that a report on the results of appeals should be submitted to Development Control Committee for information on a quarterly basis.

- 16 The Group recognised the need for all Members to be made aware of the location of Planning Policy Guidance and literature. It was considered an obligation for all Members of the Development Control Committee to understand the more-frequently used planning legislation. It was suggested that any Member who accepts a position on the Development Control Committee should undergo relevant training.
- 17 It was noted that on the membership of Development Control Committee there was a possibility of imbalance of representation across the District. It was suggested that, in considering their nominations for membership of the Committee, the Leaders of the political groups should liaise with each other.
- 18 The issue of bullying and abuse of Members/Officer by certain Members was raised. It was recognised that it would be problematic for the Review Group to proscribe. It was agreed that cases should be referred to the Leader of the appropriate political group, Chief Executive or Monitoring Officer for review. It was noted that whilst a definition of what constituted abuse might be easy to achieve, the perception of the parties involved would complicate matters.
- 19 There is also a need to overcome the confrontational atmosphere that exists between some Officers and some Members. It was suggested that a quarterly Member/Officer Development Control workshop, open to all Members and DC Officers, takes place to deal with the interpretation of planning policy, to exchange ideas and viewpoints and to review the issues arising from Development Control in the preceding three months. **(Recommendation)**
- 20 With monitoring in mind it was suggested that it be arranged that Members visit certain large or unusual/controversial developments after the development had been completed to judge whether the Committee's decision had been correct and if so, why and if not, why not, so that lessons could be learned for future decision making. **(Consideration)**
- 21 In order to address many of the issues discussed above the Group proposes the adoption of the Protocol set out in Appendix A.
- 22 The following matters were also considered and it was suggested that further consideration should be given through the Modern Local Government Group to:
 - The possible introduction of a substitute system under which other Members could attend on behalf of absent Committee members.
 - The question as to whether the Portfolio Holder for the Built Environment should be precluded from being a member of the Development Control Committee.
 - Whether the Constitution should be amended to provide that a Councillor should have been a member of the Development Control Committee for at

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least two years unless s/he had the relevant experience, before being offered the role of Chairman or Vice-Chairman of the Committee.

- The possibility of establishing two or three area committees.

- 23 Officers were asked to investigate the possibility of creating a computerised filing system that Members could access, using a password, negating the need for them to inspect the paper-based files. Should this be possible then an e-mail warning to local Members every time the file was updated would be necessary.
- 24 The possibility of including local Members' comments in Officer reports was raised. It was recognised that this would be difficult under current practice, as reports were not finalised by Officers until shortly before the agenda print deadline. This was to ensure that as much information as possible was included in the Officer's report to try to cut down on 'Late Information' tabled to Members at committee meetings.
- 25 The report of a meeting of the Group held in January 2005 are attached at Appendix B for further information on the deliberations of the Group.

Sources of Information: Development Control Protocol

Contact Officer(s): DC Protocol Advisory Group

SEVENOAKS DISTRICT COUNCIL

DEVELOPMENT CONTROL PROTOCOL

1. INTRODUCTION

- 1.1 This protocol states and reinforces the principles that underlie effective Member involvement in the development control process. It draws on established local practice as well as guidance from external sources.
- 1.2 Planning decisions can have a significant impact on our communities and it is fully understood that Members would need to play an active role in development control matters, both as representatives, decision makers and as community leaders.
- 1.3 In practice most planning decisions are delegated to the Strategic Services Director for the following reasons:
- To minimise delay to the application;
 - Because they are not controversial and can easily be determined within the framework of planning policies;
 - Because, in the case of non controversial application, Officers are authorised to deal with them; and
 - For the maintenance of the efficiency of the service.
- 1.4 Those planning applications not dealt with under delegated authority, go to the Development Control Committee for decision.
- 1.5 It must be recognised that reports to the Development Control Committee are advice based on Officers' professional knowledge and experience and that any recommendation reflects that professionalism. Despite this an extract from the recent Green Paper on 'third party appeals' should be noted ".....where officers' recommendations to reject an application are overturned by the elected councillors. Again this proposal goes straight to the heart of the democratic process. Elected members must be allowed to reject their officers' advice: it is the councillors, not the officers, who are answerable to their electorate."

2. OBJECTIVES

- 2.1 This Protocol has the following main objectives:
- (a) To guide Members and Officers of the Council in dealing with planning related matters;
 - (b) To ensure that the Council operates an open and fair system;
 - (c) To establish clear procedures; and
 - (d) To promote better communication between Officer and Member.

MEMBER INVOLVEMENT IN THE LIFE CYCLE OF A PLANNING APPLICATION IS SUMMARISED IN THE TABLE BELOW:

Stage	Opportunity for Member Involvement	Principal Means of Communication
Pre-application	<ul style="list-style-type: none"> • Members to advise Officers of local information • Officers to advise local Members in cases of <u>interest</u> involving pre-application discussions • Informal consultation on issues and sites known or likely to be controversial 	<ul style="list-style-type: none"> • Telephone/e-mail • Telephone/e-mail/meeting • Telephone/e-mail/meeting
Publicity for Application	<ul style="list-style-type: none"> • Weekly List • Contact with affected third parties • Contact statutory consultees 	<ul style="list-style-type: none"> • Post/e-mail • Telephone/e-mail/meeting • Telephone/e-mail/meeting
Assessment	<ul style="list-style-type: none"> • Dialogue with case officer • Contact with affected third parties • Possible reference to Development Control Cttee 	<ul style="list-style-type: none"> • Telephone/e-mail/meeting • Telephone/e-mail/meeting • Telephone/e-mail/meeting
Negotiation	<ul style="list-style-type: none"> • Updates from case officer 	<ul style="list-style-type: none"> • Telephone/e-mail
(Significant) Amendment following negotiation	<ul style="list-style-type: none"> • Weekly list • Contact with affected third parties/statutory consultees • Dialogue with case officer 	<ul style="list-style-type: none"> • Post/e-mail • Post • Telephone/e-mail/meeting
Recommendation	<ul style="list-style-type: none"> • Dialogue with case officer • Early report on request • Requesting reasons for refusal/conditions for approval • Referral to Development Control Cttee 	<ul style="list-style-type: none"> • Telephone/e-mail/meeting • Telephone/e-mail • Meeting • Meeting
Decision	<ul style="list-style-type: none"> • Attending Development Control Committee • Attending Committee site inspections 	<ul style="list-style-type: none"> • Meeting • Meeting
Appeal	<ul style="list-style-type: none"> • Dialogue with appeal officer • Attending Hearing or Public Inquiry 	<ul style="list-style-type: none"> • Telephone/e-mail/meeting • Meeting
Monitoring	<ul style="list-style-type: none"> • Advising officers of local information 	<ul style="list-style-type: none"> • Telephone/e-mail/writing

3. PRE-APPLICATION DISCUSSIONS

- 3.1 Members can influence future development through involvement at the pre-application stage. Planning officers must consider the potential for local Member input and use common sense in contacting interested Members on any applications that might reasonably be considered controversial or of concern to residents.
- 3.2 Full discussions about planning applications are strongly encouraged between local Members and case officers on a confidential and case-specific basis. However, recognising that Officers' time is very precious, an e-mail alerting local Members to any possible controversial pre-planning application discussions would be adequate.
- 3.3 Officers would be expected, upon receipt of an enquiry from a local Member in relation to a specific site, to disclose on a confidential basis, details of any discussions with a potential developer albeit that these discussions were at a pre-application stage.
- 3.4 Potential applicants should always be reminded that the final decision on any application ultimately rests with Members through the Development Control Committee. **Officers should avoid giving the impression that the advice given to potential applicants in any way constitutes a formal decision.** Applicants seeking advice should be made aware of the subjectivity of the advice given and, consequently, there is the need for a consistent approach by Officers in their dealings with potential applicants (enquirers).
- 3.5 It is important that case officers recognise that what might be a 'case of interest' could vary from ward to ward. It is therefore essential that planning officers know their area well and consult with local Member(s) when necessary
- 3.6 In dealing with pre-application discussions it should be recognised that as no application has yet been made, the discussion is therefore not covered by the Town and Country Planning Act. In order to ensure that an open discussion ensues, the enquirer (not applicant at this stage) must be assured that the meeting is confidential and it is recommended that the following procedures be adopted:
 - (a) A standard enquiry form must be tabled at the start of the meeting onto which all salient points raised and answered during the discussion will be minuted by the duty officer in brief notes;
 - (b) The notes on the form are to be initialled by the enquirer and the duty officer at the end of the discussion. The form will be retained by the District Council and a photocopy given to the enquirer;
 - (c) The preamble to the standard pre-application enquiry form should set out the following:
 - (i) the context of the discussion;
 - (ii) the responsibilities and limitation of the duty officer's position;

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- (iii) that all comments by the Officers are without prejudice to any subsequent application;
- (iv) that the duty officer may not be the case officer in the event of an application being made;
- (d) At the end of the discussion, the duty officer will ensure that the status of the discussion is fully understood by the enquirer/potential applicant and that his/her initials will confirm that understanding; and
- (e) The minutes of the discussion will be filed with a site reference on the basis of an OS map reference (to avoid confusion by any changes to site dimensions, name or ownership). This reference is to be linked to the GIS file.

4. APPLICATIONS

- 4.1 Since the great majority of applications are for household extensions and other minor developments it is expected that most queries from local Members can be dealt with by telephone or by e-mail. For more complex or controversial applications, face-to-face meetings between Members and Officers may be appropriate.
- 4.2 To promote good communications, Officer/Member discussions will normally be held with the responsible case officers rather than their seniors. The latter should however become involved when issues arise that cannot be resolved by Members and case officers.
- 4.3 Member/Officer discussion should take place at the earliest opportunity, with openness and respect for each other's roles, responsibilities and opinions. **Officers have a professional duty to give impartial planning advice.**
- 4.4 Planning officers, applicants and agents should ensure that site plans are correct and are up to date and should include recent development/permissions and any affected buildings in the vicinity together with the latest drawing numbers.
- 4.5 Every application site must be identified by an Ordnance Survey or GIS reference.
- 4.6 As with pre application advice, file notes of every contact with applicants / potential applicant should be written and placed on file.

5 PUBLICITY

- 5.1 The 'Weekly Planning List' should be kept completely up to date so as to include all applications showing the correct wards and the responsible case officer.. **There is an obligation on Members to follow up concerns within their ward arising from the 'Weekly List' with Planning Officers.**
- 5.2 Planning Portal service must be kept fully up to date.

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- 5.3 There is a need for consistency in the clear display of 'orange' notices. Display of notices should always be undertaken by District Council Officers. These notices should be kept on the appropriate application file.
- 5.4 Site visits by Officers are essential to ensure that all parties who ought to be notified of an application are notified. A preliminary site visit should take place before notification of the public.
- 5.5 Neighbour notification is essential and should include all neighbours who are likely to be directly affected by the application. This will include neighbours in the same road and the owners/occupiers of any properties adjoining the site or, if the development were carried out, would have sight of it or could in any reasonable way be said to be directly affected by it. The notification should include a site plan showing location of the site if necessary to clearly indicate the scope of the proposal. A record of all those notified should be kept in the application file.

6 CONSULTATION

- 6.1 There is a need to ensure that all affected parties are notified of a planning application. It is understood that the Council is not obliged to do this but it is considered 'best practice' to consult and since the Council has in the past attempted to inform all interested parties it should ensure that none is omitted.
- 6.2 A proper, and reasonable timescale should be given for comments and a copy of the original application should be provided. It is recommended the letters to neighbours should be issued at the same time as letters to parish/town councils with the same deadline for responses.
- 6.3 Appropriate statutory undertakers will be consulted.

7. COMMUNICATION

- 7.1 Members and Officers need to make sure that there is proper and adequate communication between them and if not available on the phone, e-mail should be used.
- 7.2 Communication problems can be reduced still further if Members ensure that they inform the case/area officer of their holiday (or any other absence) dates, and indicate a time or a regular day when they can be contacted.
- 7.3 Members will be informed when Officers are on site or working at home and how they can be contacted. If an Officer routinely works at home on a certain day each week, then this information should be made available to Members.
- 7.4 Officers and Members need make sure that queries, calls and e-mails are responded to as quickly as possible.

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8. ASSESSMENT

- 8.1 Local Members have a public duty to check the Weekly Planning List to identify potentially contentious applications and enter into a dialogue with the case officer if they wish to be advised / consulted on the progress of the application.
- 8.2 If a Member makes clear his/her interest in an application the Case Officer should be expected to have informal discussions with that Member with a view to clarifying and/or resolving any concerns in relation to that application..
- 8.3 If a Member is contacted by a third party in relation to an application care must be taken to avoid any personal commitment either for or against an application until all of the relevant information has been assessed after consultation with the case officer. For Members who are not members of the Development Control Committee this should not prevent them from representing the views of their community.

9. AMENDMENT OF APPLICATIONS

- 9.1 If a Member has expressed an interest in an application, when an amendment to that application is sent out for further consultation, those Member(s) are to be informed. Members should not unreasonably/unnecessarily hold up the planning process over minor amendments to an application. Members should always react and respond quickly.
- 9.2 With regard to a contentious application, ALL amendments should be notified to Members who have previously expressed an interest before a decision is made.
- 9.3 After any further consultation on an amended application, it should follow the same process as an original application.

10. DELEGATION OF DECISIONS

- 10.1 Where a case officer wishes to make a decision under delegated powers that is at variance with the town or parish council s/he must contact the local Member for their consent. Similarly Member's consent must be sought if a Member has expressed an interest in an application even if the town/parish council have no objections.
- 10.2 Communication with the local Member(s) should take place immediately when an Officer is aware of the likelihood of an impending delegated power decision so that the local Member(s) has time to familiarise themselves with the site and the details of the application.
- 10.3 The exercise of delegated powers by the Committee as set out in Table 6, Part 3 of the Constitution) is subject to the right of Members of the Committee to make a recommendation to the Council instead of making a final decision at a meeting of the Committee.
- 10.4 Members should inform Officers as soon as possible if and when an application is to go to Development Control Committee. Members should be given a copy of the early report if requested.

11. REPORTS

11.1 The following principles should be adhered to in the production of reports to the Development Control Committee:

- reports should be accurate and balanced. The report should include, amongst other things, the substance of objections and the appropriate importance must be attached to the views of those consulted;
- there should be a clear exposition of the Development Plan and other policies, the site, proposal, related history and any other material considerations;
- the reports should contain technical appraisals which clearly justify the recommendation;
- There should be a written recommendation;
- All relevant Structure Plans, Local Development Plans and Policy Planning Guidance should be cited with an explanation of the weight given to each policy. Where a recommendation seems to be contrary to policy, the material considerations justifying the departure should be clearly stated;

12. APPLICATION FILES

12.1 Planning application files for applications to be considered by Development Control Committee will be made available for Members from 6 p.m. on the evening of the meeting.

12.2 Members should be aware that they might inspect application files at the District Council offices at Argyle Road during normal office hours.

13. IMPLICATIONS FOR DEVELOPMENT CONTROL COMMITTEE MEMBERS AND LOCAL MEMBERS

13.1 Development control is likened to a quasi-judicial process and Committee members, including the Chairman and Vice-Chairman, must avoid reaching a judgement before all relevant evidence is presented to the Committee. They must view applications dispassionately and having regard to the provisions of the Development Plan and all other material planning considerations.

13.2 A local Member serving on the Development Control Committee has a duty to represent local interest, and therefore may play a more partisan role, within reasonable limits. However, all Committee members must ensure that they never give the impression of closing their minds to information relevant to an application, however much pressure they are placed under to take a particular line.

13.3 There is a need for local Members to be obligated to keep themselves informed of issues within their wards i.e. viewing Weekly Plan list etc. This would assist Members in identifying potentially contentious applications and seeking views of their town/parish council.

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- 13.4 There should be an obligation on Members, where they have requested that an application be referred to the Development Control Committee, to attend the meeting at which the application is considered. Should the Member, due to a prior commitment be unable to attend, they should provide a personal report to be read to the Committee. Officers should not be expected to prepare a full committee report if the Member does not intend to be present to reserve the application for debate. An exception is when the report relates to application by a Member/Officer.
- 13.5 Lobbying is a normal and perfectly proper part of the planning process. However, members of the public who feel they would be adversely affected by a planning application will often seek to influence it by approaching their elected Member. Members should exercise care and common sense. The impartiality and integrity of the Council should not be called into question.
- 13.6 When being lobbied, Members will need to take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been able to consider all the facts, considerations and arguments. If Members do express an opinion they should make it clear that individually they will only be in a position to vote on a final decision after having heard all the relevant evidence and considerations at the Development Control Committee.
- 13.7 Individually or in Committee, Members are entitled to hold views and take decisions contrary to Officer advice. However such a decision should be based on valid planning considerations, the details of which should be given by the Member at the meeting, and the reason for the decision should be clearly documented in the minutes of the meeting.

14. PROCEDURE AT DEVELOPMENT CONTROL COMMITTEE

- (1) *This code will be applied in such a way that the right of the Chairman of the Committee to control the debate will be maintained.*
- (2) *“Local Member” means the Member for the District Council ward affected by a planning application which is to be included on an agenda for consideration by the Development Control Committee.*
- (3) *The agenda for the Development Control Committee will be dispatched a minimum of 5 working days before the meeting i.e. on the Wednesday of the preceding week for a Thursday Committee meeting.*

- 14.1 The Chairman, Vice-Chairman and other Members, whether or not members of the Committee, should recognise the effect that their behaviour can have on the public's perception of the Council and should conduct themselves accordingly.
- 14.2 Members are strongly advised to remain at meetings of Development Control until the end of the meeting unless they have a *compelling* reason not to do so. If *exceptionally*, Committee members do need to leave before the end of the meeting they should catch the attention of the Chairman at the appropriate time, make apologies and then leave. If a Committee member knows that s/he has to leave at a certain time, the Member should give prior notice to the Committee Officer who will announce it at the same time as apologies for absence.

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- 14.3 Where a planning application has been submitted by the District Council and the appropriate Cabinet Member is a member of the Committee, that Member is strongly advised to leave the meeting when the matter is considered and not take part in the discussion or voting. (per Lancashire County Council)
- 14.4 The Development Control Committee operates in a quasi-judicial manner. Accordingly, Members who enter the meeting during discussion of an application, or are not present during the whole of the discussion, should not vote on the application as they will not have heard all the arguments for and against the proposal.
- 14.5 Any local Member who wishes to reserve an item for debate at Development Control Committee is asked to notify the Chairman/Vice-Chairman prior to the meeting.

Subject to the Chairman's right to control the debate:

- (a) any reports from site meetings will be debated first; (It should be noted that recommendations received from site meetings are not automatically approved by the Committee and that the local Member may reiterate their concerns should they disagree with the site meeting's recommendations.)
- (b) the Chairman will indicate those applications in respect of which members of the public have asked to speak, which shall automatically be reserved for debate;
- (c) when a Local Member who is not a member of the Development Control Committee has indicated to the Chairman of the Committee before the meeting that s/he would wish to address the Committee on a particular application, the application will be reserved by the Chairman for subsequent discussion.
- (d) the Chairman will then read out the details of each remaining planning application from the index to the report, so that members of the Committee who wish to move an amendment to the Strategic Services Director's recommendation or make a comment on any particular application may so indicate, when such applications will automatically be reserved for debate;
- (e) the Chairman will then put all unreserved items to the vote en bloc;
- (f) the Chairman will then deal with items before the Committee in the following order:
 - (i) items with public speakers;
 - (ii) items reserved by members of the Committee;
 - (iii) enforcement cases;
 - (iv) amendments to existing permissions; and
 - (v) objections to Tree Preservation Orders.

In respect of any item reserved for debate the following procedure will be followed:

- (a) the Chairman will read out the application reference and address.

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- (b) a member of the public wishing to speak against the application will be invited to speak for a maximum of 3 minutes;
- (c) the applicant, agent or another member of the public wishing to speak in favour of the application will be invited to speak for a maximum of 3 minutes;
- (d) the Planning Officer present will make a short introduction referring to the material planning considerations. The Officer will then speak thereafter only when invited by the Chairman.
- (e) The local Member will be invited to speak *and* may (if member of the Committee) move a recommendation for approval/refusal/site meeting etc. Where the local Member is not a member of the Committee he/she should ensure that a member of the Committee is ready to move a motion in accordance with their wishes. The Chairman will seek a seconder to the motion. The local Member (even if not a member of the Committee) will have prescribed 4 minutes speech time at the beginning and end of the debate (the time limit will be subject to the Chairman's discretion).
- (f) Normal debate/discussion will then take place – Chairman and Vice-Chairman are free to take part in the debate. If the local Member or any other member has not moved a motion, the Vice-Chairman should move a motion during or at the end of the discussion on the application.
- (g) If a Member wishes to raise a new aspect to the debate on the item as a result of information brought to light during the debate then they will be allowed to do so for up to 4 minutes, or longer at the discretion of the Chairman.
- (h) The local Member(s) (whether or not a member of the Committee) will be invited to participate in the debate (in the case of a non-member of the Committee, as though s/he were a member of the Committee), and respond to any motion (or amendment thereof), or to any views expressed by the Officers immediately prior to the proposer's right of reply except that a non-member of the Committee will not be entitled to propose or second a motion or vote.
- (i) Members are requested not speak at length on items where they are in full agreement either with the Officers' report or with the views of a Member who has spoken earlier in the discussion.
- (j) The vote will be taken and the Chairman will advise the meeting on the result of the vote including whether planning permission has been granted, refused etc.

15 PROPOSALS CONTRARY TO OFFICER ADVICE

- 15.1 All Members are encouraged to raise any queries or issues they may have regarding a specific application report with the appropriate Area Planning Officer as soon as possible. This will enable Officers to consider the issues raised and discuss them with the Chairman.
- 15.2 Under normal circumstances a Committee member, having considered the Officers report and who wishes to put forward a contrary proposal or a substantive amendment to the Officer recommendation set out in the agenda, is asked to

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contact the appropriate Area Planning Officer or the Head of Development Services as soon as possible. This will enable the matters to be discussed at the Chairman's briefing normal the Monday or Tuesday before the Committee meeting and to prepare for any additional advice for the meeting, including where appropriate reasons for refusal or conditions attached to any permission.

- 15.3 On receipt of notice of a proposal contrary to an Officer's recommendation or an amendment to the recommendation from a Committee member, the Chairman and the Committee Services Team will be advised by the Officer.
- 15.4 On receipt of notice from a Committee member, the Area Planning Officer or the Head of Development Services may choose to withdraw the report from the agenda to allow for further discussion or re-assessment. Alternatively, and if the committee Member's (and local Member's) concerns relate to visual amenity, the Area Planning Officer or the Head of Development Services may discuss the desirability of arranging a Committee Site Inspection with the Chairman.
- 15.5 A Planning Officer if so requested should assist in giving general policy reasons for refusal or conditions for approval to be attached to any permission. In the event of an appeal or a judicial review, it is imperative that the correct grounds for refusal or conditions for approval be cited on the published notice of decision.
- 15.6 In the event of a motion contrary to the Officer's recommendation being formally moved, the Officer(s) present will have the opportunity to address the Committee on the implications of such a decision having regard to the provisions of the Development Plan and all other material considerations, inclusive of implications for any subsequent appeal, before a vote on the motion is taken. Where appropriate the Officer may recommend to the Chairman that a decision on the application be deferred to enable a further report to be presented to the Committee addressing these issues raised by the debate and the implications.
- 15.7 Where a decision to grant or refuse permission contrary to the Officer recommendation occurs the reasons for such a decision taken by Committee should be clearly minuted. In the event of an appeal where Members have made a decision contrary to Officer advice, the appropriate local Member is expected to attend the appeal.

16. REPORT DEFERRALS

- 16.1 The form of the decision will be as follows:

"The Committee was minded to refuse/approve the application contrary to Officer advice on the following grounds/subject to the following conditions and informatives (as necessary) [*herein to be inserted the reasons/conditions, etc.*] but, in accordance with procedures, it was

RESOLVED that consideration of the application be DEFERRED to the next meeting"

- 16.2 Any decision to defer a report should be taken BEFORE any other decision to approve or refuse the report. Should the Committee be minded to refuse/approve the report pending deferral to await further information, then, when the report

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comes back to the Committee, debate must centre around the effect of the additional information on the proposal keeping in mind the opinion to approve or refuse voiced in the first instance. Public speakers may not speak again.

- 16.3 Should a report be deferred for further information without the Committee's opinion on whether it is minded to approve or refuse, then a debate may take place on the whole of the report together with the additional information. Public speakers may also speak again in this instance.
- 16.4 Members may feel that the application should be viewed on site before a decision is made in which case an amendment/resolution for a site meeting is put to the Committee and, if approved, a set procedure is then followed at the site meeting.

16. CONSTITUTION OF SITE MEETINGS

- 16.1 The Members of each site meeting with voting rights, shall be:
- (a) (i) The Chairman of the Committee, save where the development is within his/her ward, when s/he shall attend in the capacity as a local Member without voting rights, and another member of the Committee shall be selected to attend the site meeting, with voting rights, in his/her place; or
 - (ii) The Vice-Chairman of the Committee, save where the development is within his/her ward, when s/he shall attend in the capacity as a local Member, without voting rights, and another member of the Committee shall be selected to attend the site meeting, with voting rights, in his/her place; and
 - (b) except in the case where neither the Chairman nor Vice-Chairman of the Committee is able to participate as a voting member or be present, when an extra non-ward Member shall be appointed, four non-ward Members, who shall be determined by selections in alphabetical order by the Chief Executive from the list of members of the Committee. Where the site meeting is convened by the Kent County Council to discuss an application that has been considered by the Development Control Committee, the number of on-ward Members may be less than four.
- 16.2 If neither the Chairman nor the Vice-Chairman of the Committee is able to chair the meeting (because of absence or being present as a local Member), a Chairman for the meeting will be selected by the non-ward members present;
- 16.3 The local Member(s) shall be invited to attend the site meeting but without voting rights; and
- 16.4 Anyone who has made representations about the development shall be invited to attend the site meeting.

17. PROCEDURE AT SITE MEETINGS

The purpose of the site meeting is for a small group of members of the District Council's Development Control Committee:

- (a) to view the site;

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- (b) to receive views of Local District Council Member(s), the Parish Council, local societies and residents, the applicant and his/her agent and any other interested parties; and
 - (c) to decide on a recommendation to the Committee.
 - (d) Members should remain as a group throughout the meeting, so that each one hears and sees the same things as the others. Individual conversation with applicants, agents or objectors should be avoided so far as possible, even before the meeting while waiting for the rest of the Members to arrive. Apparent familiarity with any interested party can give rise to unfavourable comment. Local Members are particularly vulnerable in this respect.
 - (e) The group should look at every aspect of the site in relation to the application, with particular reference to any objections or representations which may have been made.
 - (f) The group shall always enter on and view the land, the subject of the application, (unless permission has been withheld) and also on any neighbouring property, if permitted, if an objection has been made that the proposed development would adversely affect it in any way.
- 17.1 The Chairman of the meeting will open it with introductions of those attending and will explain the procedure for the conduct of the meeting.
- 17.2 The Strategic Services Director (or representative) will explain the proposal.
- 17.3 The Chairman will invite members of the public present to nominate a spokesman (or spokesmen) to represent commonly held opinions. He will explain that programming of the group's work dictates that the meeting is limited in time and therefore if necessary he will impose time limits with due discretion upon speakers
- 17.4 At the discretion of the Chairman the following interested parties may ask questions and comment:
- (a) Members of site meeting;
 - (b) Local District Council Member(s);
 - (c) parish or town council representatives;
 - (d) local societies;
 - (e) local residents – those residents holding similar views having been invited to appoint a spokesman;
 - (f) the applicant's agent;
 - (g) the applicant; and
 - (h) any other person who owns the site or has an interest in it.

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- 17.5 This meeting will view the site, and any relevant neighbouring property if permitted, taking particular note of any aspect drawn to its attention by interested parties.
- 17.6 All attending will be asked if they have any further new comment to add.
- 17.7 The Chairman will announce to those present that the members of the site meeting will now consider what recommendation to make to the Development Control Committee. Members of the public may remain while Members arrive at their recommendation, but may not speak.
- 17.9 The Chairman will then advise those present whether the recommendation to be made to the Development Control Committee is for planning permission to be granted, refused etc.

18. APPEALS

- 18.1 In the event of an appeal being lodged against a refusal of, or failure to determine a planning application, local Member(s) be consulted on the procedure to be requested of the Planning Inspectorate for consideration of that appeal and that local Member(s) be consulted on the content of any appeal submission made on behalf of the Council to the Planning Inspectorate.
- 18.2 The local Member(s) should have dialogue with Officer on the general grounds for an appeal and the Council's defence of that appeal.
- 18.3 When an application is refused, Members should make sure that all the relevant reasons for refusal have been included so that if the applicant goes to appeal there is a sustainable case to be made. .
- 18.4 Members are expected to attend an appeal if they have been instrumental in its refusal particularly if the refusal was contrary to the Planning Officer's recommendation.

Notes:

- | | |
|---------------|--|
| Local Members | Any occurrence of this term means the Member(s) representing a ward plus any other Member who has expressed an interest. |
| Enquirers | Potential applicants |

APPENDIX B

Development Control Protocol Review Group

Notes of meeting held on 7th January 2005

Present: Allen, Baker, Mrs. Broomby, Mrs. Dawson, Dean (Chairman), Mrs. Morris and Walshe.

Also present: Cllrs. Mrs. Cook (Leader of the Council), Mrs. Davison (Portfolio Holder for Planning and Transport), Davison (Vice-Chairman of the Development Control Committee, the Strategic Services Director (Jean Morgan), the Head of Development Services (Kelvin Hinton) and the Service and Performance Manager (Colin Smith).

An apology for absence was received from Cllr. Williamson (Chairman of the Development Control Committee).

ONGOING REPORT OF THE DEVELOPMENT CONTROL PROTOCOL REVIEW GROUP

Membership of Review Group: Cllrs. Allen, Baker, Mrs. Broomby, Mrs. Dawson, Dean (Chairman), Howes, Mrs. Morris, Quaife and Walshe.

At its meeting on 2nd September 2004, the Modern Local Government Group set up the Review Group. That meeting of the Modern Local Government Group followed consideration by the Council on 27th July 2004.

The subject of this report is the draft Development Control Protocol, it's content and practical implementation. The protocol is attached at Appendix C. Further reports will be presented on (i) Development Control issues referred to the Group following a meeting of the Overview and Scrutiny Board held on 5th October 2004 and (ii) the Statement of Community Involvement as referred to the Review Group at the meeting of Council held on 16th November 2004.

This report of the Review Group is the result of consideration of:

- Member involvement in the life cycle of a planning application;
- The 'Protocol on procedure at Development Control Committee meeting and site meetings'; and
- The amended section of the protocol 'Proposals Contrary to Officer Advice – Modern Local Government - 2nd September 2004 Item 3 - Hand out.

Before considering in detail the findings of the Group, the Strategic Services Director stated that as Officers, she, Mr. Hinton and Mr. Smith, had found many parts of the report helpful. However, there were also many misunderstandings and misapprehensions also contained in the report.

She felt that the report fell into four themes:

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- Corporate Government i.e. committee arrangements, area committees etc.
- Process i.e. everything in the report up to committee arrangements.
- Respect/Trust/Culture
- Responsibility for awareness of planning applications/process.

She felt that the consideration of corporate governance should be left aside at this meeting. With regard to process, Mrs. Morgan announced that over the next six months there would be a huge change in the way in which planning information would be made available. This approach had been prepared over the last twelve months. She recommended that members inspect the websites of Thanet or Bromley to get a taste of what was coming. However, Members were advised that the District Council's site would be further on that these two sites when it was launched. Mrs. Morgan wanted the system to be as user-friendly as possible. To this end she requested Members' input on the new system to be forwarded to her in four weeks time.

With regard to respect, culture and trust Mrs. Morgan felt it was very important for all Members to realise that planning officers considered themselves to be professional in the same terms as doctors, solicitors etc. and that any criticism of their work etc, unfounded or otherwise, cut very deeply. Planning Officer took great pride in improving the local environment and balancing the needs of the community when considering planning applications. She also advised that the power play between a young and/or inexperienced planning officer and senior, more articulate Members was not helpful. She expressed her alarm at the appearance of a confrontational culture between Members and planning officers since September 2004. Mrs. Morgan advised that she had never experienced such a culture in her five years at the District Council or other authorities she had worked for. She felt that was very unfortunate and should not be allowed to endure. There should be trust in the views of officers and vice versa.

Lastly, responsibility meant the awareness of Members to any planning proposals. The officers had a duty to inform Members of any issues arising in their wards, but it was also the duty of Members to keep themselves informed by whatever means was available to them. In conclusion, the Strategic Services Director undertook to publicise where information can be found and by what means.

Cllr. Mrs. Davison, Portfolio Holder for Planning and Transport reported that although the report was difficult to follow, it contained many workable and user-friendly ideas and many of the suggestions were already in place. However, since many of the suggestions were already a matter of practice, the report made it look like the Review Group were "too far away" i.e. not familiar with the processes and practices of the Development Control service. In conclusion, Cllr. Mrs. Davison stated that she was very alarmed at some of the adversarial comments of Members versus Officers.

Cllr. Davison, the Vice-Chairman of the Development Control Committee, stated that the Development Control service should be team process and this included Members and he was worried about some of the comments contained in the report not assisting that team process.

The Chairman thanked everyone for their comments and then proceeded through the report section by section.

A) Member Involvement in the Life Cycle of a Planning Application

It has been noted that there were at least three different versions of this document. The working party decided to use the version that was brought to Council (Annex 1) as its starting point.

1) PRE-APPLICATION

- Local Members to advise Officers of local information
- Officers to advise local Members in cases of interest involving formal pre-application discussions.
- Informal consultation on issues and sites known or likely to be controversial

Pre application: Results of Discussions

1. *Whilst the current wording on the MLGG note covered the position adequately in broad terms, it was important that case officers should recognise that what might be a 'case of interest' would vary from Ward to Ward and therefore it was essential that the officer knew his/her area well. Concern was expressed that if a single officer knew an area well, knowledge would be lost if that officer left. Mr. Hinton stated that this was never the case. Definition of 'case of Interest' – one that had the potential to be controversial, cause concern to residents.*
2. *Notes of meetings of officers with potential applicants or "enquirers" should be agreed and signed by both parties. (Please see Appendix A – Cllr. Quaipe's suggestions)*
3. *Officers should always remind potential applicants that the final decision on any application rested with members through the DC Committee.*
4. *Officers should avoid giving the impression that the advice given to potential applicants in any way constitutes a formal decision. Applicants seeking advice should be aware of the subjectivity of the advice given.*
5. *Officers to contact local Members if potential applicant requests this and set up a meeting if necessary. It was noted that it was important that during such meetings with possible applicants, Members should just sit and listen. They should not commit themselves to an opinion in either direction. An officer should always be present when a Member has a meeting with a developer. Mr. Hinton undertook to produce advice on different meeting scenarios for Members (and officers).*
6. *Recognising that officers' time was under pressure, a brief e-mail to local Members advising them would be adequate.*
7. *Need for a consistent approach by officers in their dealings with potential applicants (enquirers).*
8. *Application site must be identified by an Ordnance Survey reference.*

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9. *Officers should avoid giving a Member the answer “An application has not yet been submitted” when pre-application discussions have taken place. Mrs. Morgan stated that work needed to be done to enlarge officers’ understanding of the Member perspective.*
10. *File notes of every contact with potential applicant and all applicants should be written and placed on file. Mr. Hinton stated that file notes were not kept of every contact. However, he was investigating how things were done at the Medway Unitary Council to see if any improvements could be made.*

2) PUBLICITY

- Weekly List
- Copy plans
- Contact with affected third parties

Publicity: Results of Discussions

1. *Need for consistency in clear display of ‘orange’ notices. Display of notices should always be undertaken by District Council officers. Mr. Hinton undertook to circulate the “orange notice” procedure to Members and well as investigation possible new procedures.*
2. *Addition of case officer on Weekly List was welcomed. Mr.. Hinton stated that inclusion of the case officer on Weekly Lists was now introduced and he was happy to also include the name of the ward i.e. Sevenoaks Town and St. John’s rather than simply Sevenoaks. He also stated that the occurrence of “wrong wards” being listed for applications was being investigated.*
3. *Planning portal service must be kept up to date. Mr. Hinton advised that the new Public Access System (PAS) was now ‘live’ and undertook to circulate the access procedure to all Members.*
4. *Neighbour notification - important to get this right – up to date maps essential including additional maps after officer site visits. Officer site visits should inform process.*
5. *Could local Members be advised as to who had been “neighbour notified”? Cllr. Davison felt, and the Group agreed, that not all Members would want to receive this information and the onus should be on the local Member to find out if s/he was sufficiently interested. Mr. Hinton stated that this information would be available on the new PAS. Mrs. Morgan advised that the Council was buying into this system and requested that there be Member representation of the user group being set up to monitor the system’s progress. It was agreed that the Review Group could be used in this instance.*
6. *Essential that officer site visits to all sites included viewing the site from all perspectives plus clear notes of this visit on file. See 4. above. Mr. Hinton advised that a checklist was being introduced that should assist the follow up of this suggestion. He undertook to investigate further.*

3) ASSESSMENT

- Dialogue with case officer
- Contact with affected third parties
- Reference to Development Control Committee

Assessment: Results of Discussions

1. *Need for local Members to be obligated to keep themselves generally informed of issues within their wards i.e. viewing Weekly Plan list etc. This would assist Members in identifying potentially contentious applications and seeking views of their town/parish council.*
2. *Encourage case officers to have more informal discussions with local Members and vice versa.*
3. *The importance of two way communication between planning officers and local Members was recognised. It was recognised that some Members feel pressurised by officers who wish for an application to be decided by delegated powers. Similarly, some Members feel that they cannot go against the views of their town/parish council and request that applications were considered by the Development Control Committee as a result.*
4. *The need to overcome the confrontational atmosphere between some officers and some Members must be overcome.*

4) NEGOTIATION

- Updates from case officer

Negotiation: Results of Discussions

1. *The lack of a consistent approach in informing local Members on changes to planning applications and/or issues arising from planning applications already approved.*
2. *The lack of available planning officers to speak to local Members re planning applications in their wards.*
3. *The lack of response from planning officers when left messages by local Members requesting information on planning applications in their wards.*

Mr. Hinton advised that points 1 2 and 3 above were internal management (discipline) issues. However, he requested that Members telephone in advance to make an appointment with the appropriate officer(s). If Member were unable to contact a particular officer he requested that they contact the Strategic Services secretariat instead. As a result of a plea from Cllr. Mrs. Cook to not forget that some Members were not e-enabled, Mr. Hinton agreed to draw up a "contact" protocol.

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Mr. Smith requested that Members inform him of any non-responses to telephone, e-mail, desk messages etc. by officers.

Key Issues arising from discussions:

- *Need for a protocol on how and when Members were to be contacted when alterations were made to applications and when issues arose over existing planning permissions. (e-mail/ansaphone message/desk notes etc.) (SEE ABOVE)*
- *Need for a protocol on Planning Officers responding to Members' requests for information (e-mail / ansaphone messages / desk notes etc.) (SEE ABOVE)*
- *Investigate the possibility of creating a computerised filing system that Members could access, using a password, negating the need for them to inspect the paper based files. Should this be possible then an e-mail warning to local Members every time the file was updated would be necessary.*

5) AMENDMENT FOLLOWING NEGOTIATION

- Weekly list
- Copy Plans
- Contact with affected third parties
- Dialogue with case officer

Amendment to Applications following Negotiation: Results of Discussions

Weekly list – *The following points were made:*

- *Details of applications listed by ward were available via the 'planning portal'. Need for members to understand how to access the system and for it to be kept up to date and accurate.*
- *The necessity that the 'Weekly List' was kept completely up to date so as to include all applications. Mr. Hinton explained that the "Weekly List" produced on paper and by e-mail, was published on a set day each week. However, the new PAS system was updated continuously, which explained why information on the Weekly List sometimes differed from PAS.*
- *Obligation on Members to follow up concerns arising from the 'List' with Planning Officers.*

Key Issues arising from discussions:

- *An 'idiots guide' describing the means of using the "Open Access – Planning Portal" should be distributed to all Members. Mr. Hinton undertook to produce a guide.*
- *Need to know the details of any amendment to planning applications as quickly as possible. It was noted that minor amendments to planning applications did not appear on the Weekly List. A telephone call was the favoured means of achieving*

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this although e-mails or text messages to mobile phones were also mentioned. Members could inform their local planning officer of their preferred method of contact. It was noted that local Members were NOT always contacted when amendments had been made to applications within their wards. It was agreed that when an amendment to an application was sent out for further consultation, the appropriate local Member(s) would be informed. It was noted that most amendments to application were sent out for further consultation. However, the judgment as to whether an amendment was inconsequential or not rested with the case officers. Mr. Hinton agreed to investigate a system to inform local Members of all amendments to planning applications.

- *In was recognised that Members should not unreasonably/unnecessarily hold up the planning process over minor amendments to an application. Local Members should always react and respond quickly.*

Copy Plans. – *The following point was made:*

- *Planning officers, applicants and agents should ensure that site plans were as up to date as possible, should include recent development/permissions, and any affected buildings in the vicinity together with the latest drawing number. The question of context was raised in relation to this matter. Cllr. Davison requested the tightening of the rule concerning completeness of documentation on application files.*

Contact with affected third parties – *The following points were made:*

- *The necessity of attaching the appropriate importance to consultees' comments included in officers' reports together with the need to properly reflect these comments in a report.*
- *The need to ensure that all affected parties were notified of a planning application. Members understood that the Council was not obliged to do this but it was considered that it would be 'best practice' and since the Council did attempt to inform all interested parties it should ensure that none were omitted. (SEE ORANGE NOTICE ABOVE)*
- *Consultation – It was noted that the date of return of comments to the District Planning Authority should not be the same as the likely date of receipt of the consultation request by the consultees. A proper, and reasonable timescale needs to be included as well as a copy of the original application.*

6) RECOMMENDATION

- Dialogue with case officer
- Draft report on request
- Requesting reasons for refusal

Recommendation: Results of Discussions

Dialogue with Case Officers - Key Issues arising from discussions:

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- *Early discussion with local Member(s) on officer's recommendation when planning application was to be considered by the Development Control Committee.*
- *Where a strong difference of views arises on a planning application between a planning officer and a local Member then the case should be passed to a senior officer to deal with for consultation/arbitration. Mr. Hinton advised the Group that this did happen.*

Draft Report on Request – *The following points were made:*

- *Members felt that there was a lack of balance in Officer Reports and that Officers were too selective with information included. There was also a lack of consistency in the justification and weighting given to certain policies. (22.10.04)*
- *The possibility of including local Member's comments in officer reports was raised. It was recognised that this would be difficult under current practices, as reports were not finalised by officers until shortly before the agenda print deadline. This was to ensure that as much information as possible was included in the officer's report to try to cut down on 'Late Information' tabled to Members at committee meetings.*
- *It was requested that all officer's reports be clear, accurate and consistent to the SDLP policies. Where Local Plan policies were not thought appropriate justification should be given. Members were advised that policy was not the starting point when officers first considered a new planning application but the impact of the application.*
- *Reports should include recognition of the impact of the application on all plans and policies of the District Council, Strategic Planning Authority, and the Regional Planning Authority. e.g. AONB; Green Belt; SDLP; Community Involvement.*
- *Members felt that officer's reports should be constructed in such a way that the reader was led to the conclusion in a logical way and would suspect the conclusion even before reading it. Justification for preference/conclusions must be included even in reports containing open recommendations.*
- *Quiet areas for officers' writing reports were advocated to avoid the occurrence of errors.*
- *Mrs. Morgan commented that the reported to Committee could be much shorter. At the moment, the reports were very comprehensive. She stated that she would investigate further especially with electronic availability to the forefront.*
- *Officers noted that there was a Member briefing from 6 p.m. before each meeting of the Committee. It was requested that planning application files be made available to Members' between 6 p.m. and 7 p.m.*

Requesting Reasons for Refusal – *The following point was made:*

- *It was observed that open recommendations on finely balanced applications did not cause problems when a refused application went to appeal.*

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- *The use of open recommendations i.e. a recommendation that included conditions for approval and reasons for refusal, on finely balanced applications were supported by the Review Group. Mr. Hinton categorically stated that he was absolutely opposed to reports with an open recommendation. He saw this as unprofessional and would avoid at all costs. (SEE KH'S OBJECTIONS ABOVE)*
- *Mr. Hinton requested that Members' contact the appropriate planning officer before a meeting of the Committee if the Members wished to see an officer's recommendation overturned. This would enable the officer and Member to work together on the reasons for refusal or conditions for approval in a constructive way. Officers recognised that some Members might feel that this would be "showing their hand" however this was not the case. Officers' simply wished for Members' arguments against an officer's recommendation to stand up to cross examination at the Committee meeting.*
- *Mr. Hinton agreed to publish the list of applications likely to go before a meeting of the Committee at an earlier date than is currently done.*

General Comments on the Above Issues

- a. *Planning officers were there to give Members their professional advice on planning applications but this should not presuppose that this advice had to be accepted by Members.*
- b. *Members need to be assured that all development control processes were clear and consistent in the way they were carried out.*
- c. *The matter of local Members who were members of the Development Control Committee not voting on matters within their wards was raised together with allowing them the same speech rights as local (non committee) Members. INSERT ALDA'S RESEARCH*
- d. *The possibility of two or three area committees was raised and the general premise was warmly supported. Research on this subject to be undertaken by the Committee Services Team and presented for consideration to the next meeting of the Review Group. (Please see attached at Appendix B) Mrs. Morgan requested that the introduction of area committees be carefully considered by the Review Group and other appropriate bodies before that introduction took place. She advised that such a major change would have a massive impact of the Development Control service. IT was agreed by the Review Group that the consideration of the possibility if area committee would be postponed until later this year and would be included in the Member/Officer review of the service. Mr Hinton advised that a consultant was undertaking some work on this subject and would be looking to introduce a monitoring system.*
- e. *It was suggested that it be arranged that Members visit certain large or unusual/controversial developments after the development had been completed to judge whether the Committee's decision had been the correct and if so, why and if not, why not, so that lessons could be learned for future decision making.*
- f. *To save time at meetings it should be included in the Protocol that ALL Local Members inform the Chairman and/or Vice-Chairman if they wished to reserve an*

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item for debate at the Committee. It was noted that a few officer's reports went through without debate (despite having been referred to the Development Control Committee at the request of local Members) and this was felt to be a waste of officer and Committee time.

- g. The possibility of setting up trial area committees (see (d) above) was mooted. The clerk agreed to look into the possibility of the Development Control Committee delegating decision-making powers to sub-committees without the formal approval of Council. The Group was advised that this suggestion was not possible under the Council's present Constitution. Cllr. Mrs. Cook stated that she would not like to see the introduction of area committees.*
- h. It was requested that the appropriate case files be made available at the back of the Council Chamber from 6.30 p.m. to 7 p.m. before meetings of Development Control Committee for Members' use. SEE ABOVE*
- i. A consistent Development Control report format was suggested. The Committee Officer undertook to bring a blank of the new recently introduced report format to the next meeting of the Review Group. The Group felt that this work should be undertaken at a later date.*
- j. It was noted that the bullet point summary of objections received concerning an application included in officer's reports were not always accurate. Members did not understand why letters of support were reproduced in full in the appendices of the reports and letters of objections were summarised within the report. SEE ABOVE*

7) DECISION

- Attending Development Control Committee
- Attending Committee site inspections

Decision: Results of Discussions

The following points were made or raised by Members during discussion:

- *The need for members of the Committee to be prepared with grounds for refusal/approval based on policy when discussing applications at Committee. The lack of availability of planning officers for assistance/poor communication between Officers and Members prior to an application coming to Committee inhibited this as did Members' inability to see draft reports (see notes from 22.10.04) SEE ABOVE*
- *The lack of need for the Vice-Chairman moving in favour of Officer recommendation prior to debate was considered. Further to this comment the following procedure was suggested for application consideration after any public speakers had spoken, at meetings of Development Control Committee:*
 - *Chairman to open discussion for debate by reading out application reference and address*

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- *The Planning Officer present to do a short introduction (as per the procedure at site meetings). The Officer to speak as and when appropriate on issues raised during the debate.*
- *Local Member (if member of the Committee) may move a recommendation for approval/refusal/site meetings. The Chairman to seek a seconder to the motion*
- *Local Member (if not a member of the Committee) to have prescribed 4 minutes speech time (subject, as always, to the Chairman's discretion)*
- *Normal debate/discussion – Chairman and Vice-Chairman to be free to take part in the debate.*
- *If the Local Member had not moved a motion, any Member to be able to move a motion during the discussion on the application.*
- *The Local Member sums up as usual.*
- *The Vice-Chairman to summarise the discussion, if necessary, as usual.*
- *Vote to be taken. Chairman to advise the meeting on the result of the vote.*

The Review Group agreed to review the suggested process for consideration of applications at Committee meetings sometime in the future, as there was some perceived disadvantages to local Members in the suggested process.

- *Appeals – the number of decisions overturned at appeal is roughly equal to those upheld, and only a minority of decisions award costs against the Council.*

Key issues arising from discussion:

- a. *Need to set a protocol to ensure that officers and Members could meet to discuss applications prior to Committee (e.g. set times when Officers were available to Members).*
- b. *Possibility of open recommendations in Committee reports. (see note (d)iii from 22.10.04) Mr. Hinton stated that the inclusion of open recommendations in officers' reports was not an option. He advised that it was nearly always possible to make a recommendation either for or against on all planning applications.*
- c. *The need to make all Members aware of location of Planning Policy Guidance and PPG3 literature. It was considered an obligation for all Members of the Development Control Committee to understand planning legislation. It was suggested that any Member who volunteers to be a member of the Committee should undergo training before s/he was allowed to attend as a member.*
- d. *Possibility of access to draft reports (see notes from 22.10.04).*
- e. *Possibility of omitting Vice-Chairman's motion for Officer recommendations at the beginning of debate in favour of allowing a motion by the Chairman or local*

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Member after debate to reflect the arguments/general feeling of the Committee.)(see section 7 above)

- f. Need to exclude the possibility of appeals as an argument in consideration of applications.*
- g. Mr. Hinton suggested that a “rehearsal” of a Development Control Committee could take place so all Members and officers could see how a new procedure might work.*
- h. Mrs. Morgan suggested that the Review Group and other appropriate Members visit other local authorities to see less formal meeting arrangement in action. This was agreed by the Group.*
- i. The Review Group agreed that planning officers should be careful how they advise that a decision by the Committee could be overturned at Appeal. Also, it was considered that Members should NOT say if they think that a decision would be overturned at appeal.*

Attending Development Control Committee - *The following points were made or raised by Members during discussion:*

- Poor attendance at meetings could lead to negative public perception. (12.11.04)*
- Seating of Councillors, including local Members, in Chamber was crucial as public could only see the front two rows from the Public Gallery. (12.11.04)*

Key issues arising from discussion:

- a. Possibility of introducing a substitute system in which other Members could attend on behalf of absent Committee Members. (12.11.04). A possible “substitute” arrangement was suggested where the substitutes for Development Control Committee would be approved by Annual Council in May. The Committee Services Team to be informed of any absences and the substitute BEFORE a Development Control Committee agenda was despatched to enable the information to be recorded on the agenda. The number of substitutes to be proportional. The Committee Services Officer present agreed to investigate this matter further. The Group agreed to review the possibility of the substitute system sometime in the future after the training process for Development Control had been completed and a consultant had been asked for a view.*
- b. Possibility of Members moving forward in Chamber when attendance was low.*
- c. The Review Group had a consensus of opinion that the Portfolio Holder for Planning and Transport should not be a member of the Development Control Committee. The main reason for this was that it was felt that the Portfolio Holder should always support the Officer recommendation. It was also felt that the warning of “the District Council will lose this at appeal” was used too often. The Government’s planning grant was also mentioned. The Chairman of the Committee’s comments on having the responsible Portfolio Holder as a member of the Committee was that there was no reason in legislation that the P/H should be excluded. This was also the view of the responsible Portfolio Holder. The Group felt that advice on this issue should also be sought from the consultant.*

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- d. *It was considered that a Councillor should be a member of the Development Control Committee for at least two years unless s/he had the relevant experience, before being offered the role of Chairman or Vice-Chairman and should also go through chairmanship training before taking up the post. It was also considered important that the Chairman and Vice-Chairman of the Committee were fully cognisant of development control policies and procedures and protocols.) The Group agreed to delay a decision on this matter until Development Control training had been completed as it was felt that the training might be the solution to the Group's concerns.*
- e. *Members should be strongly advised to stay at meetings of Development Control Committee for as long as possible. Members of Development Control Committee should attend all meetings until the end unless they have a legitimate reason not to do so. If Members need to leave before the end of the meeting they should catch the attention of the Chairman at the appropriate time, make apologies and then leave rather than simply wandering out off the Chamber. This recommendation was to do with public perception. If a Member knew s/he had to leave at a certain time, the Member could give notice to the Committee Officer who would then announce it at the same time as apologies for absence.*
- f. *If a Committee (local) Member had an item on the agenda, then the Review Group recommended that they were strongly encouraged to remain in the meeting until the application was discussed. Should a local Member who was not a member of the Committee not be able to attend, then they should nominate another Member to attend in their place. Again, a matter of public perception.*
- g. *It was noted that recommendations received from site meetings were not automatically approved by the Committee and that the local Member could reiterate his concerns should be disagree with the site meeting's recommendations.*
- h. *After being advised of the concern of the Chairman of the Committee, the leaders of the political groups were asked to liaise on what Members from which wards they were putting forward as members of the Committee.*

Attending Committee Site Inspections (meetings and visits) - *The following points were made or raised by Members during discussion:*

- *Possibility of conducting a day of site visits to all application sites on agenda (example – Tunbridge Wells). Possibility of positive public perception.*
- *Site visits could allow for increased sense of Member involvement.*
- *The Chairman of the site meetings should always spell out the procedure to those present. The Review Group recognised that this was usually done. The Committee Officer present should also have spare copies at site meetings.*

8) APPEAL

- Dialogue with case officer
- Attending Hearing or Public Inquiry

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Dialogue with Case Officer - *The following point was made by a Member during discussion:*

- *Officers did not always refer to the policy grounds offered by Members when publishing the reasons for refusal. This had serious implications when applications went to appeal.*

Key issues arising from discussion:

- *The possibility of Members receiving a draft of the reasoning prior to official publication.*

Attending Hearing or Public Enquiry

- *The Inspectorate had noted in a small number of cases that it was ‘unfortunate’ that the Local Member was **not** present at an appeal. Mr. Hinton advised that, in future, proper planning of appeal cases could overcome this issue.*

9) MONITORING

- Advising officers of local information

General Comments:

- *The matter of whether the Portfolio Holder should be on the Development Control Committee was raised as it was felt that this might compromise his/her position. This situation existed in only one advisory group and one other non-executive committee. In that instance of the advisory group, it was approved after debate and only for a trial period. It was noted that the Finance Advisory Group, to which this note refers, does not have an executive function. In addition, the responsible Portfolio Holder was a member of the Licensing Committee Pool and it was currently prescribed that he sit on every Committee of six*
- *The possibility of Development Control training for Committee members was raised. Instead of a full day training course, a half day and half evening (on different days) was recommended.*
- *The issue of bullying and abuse of or by Members was raised. It was recognised that it would be problematic for the Review Group to proscribe. It was agreed that cases should be referred to the leader of the appropriate political group, Chief Executive or Monitoring Officer for review. It was noted that a definition of what constitutes abuse was easy to achieve. However, the perception of the parties involved complicated matters.*
- *The Review Group requested that where possible, consistency be adhered to with regard to case officers completing the applications they were responsible for. It was understood that if a case officer left the authority then another officer would take up the workload. However, it was felt that in the case of a staff reorganisation, the case officers should be allowed to carry across cases already started. (13.12.04)*

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B) The 'Protocol on Procedure at Development Control Committee Meetings and Site Meetings'.

The existing protocol for procedures at Development Control Committee meetings and associated site meetings is contained within the Constitution of Sevenoaks District Council and is attached at Appendix C.

Members of the Group expressed great concern in relation to Section 2 – Code of Practice (5) Proposals Contrary to Officer Advice – paragraphs a. to h. and resolved to discuss their practicability with the Chairman and Vice-Chairman etc. at the meeting on 7th January 2004. This matter was shelved until a future meeting of the Review Group. However, the Group's concerns were noted by non-members of the Group present.

<p>It was agreed that a further meeting of the Review Group would take place six months after any recommendations had been implemented to review progress/improvements.</p>

APPENDIX A

Draft of Improvement Measures for Development Control Function

Pre-Application

This service is operating reasonably well but requires several specific improvements to avoid misunderstandings and ambiguities.

Please note that no application has been made and that the discussion is therefore NOT covered by the Town and Country Planning Act (TCPA). In order to ensure that an open discussion ensues, the enquirer (NOT applicant) must be assured that the meeting is confidential. (see (c) below)

- (a) A form must be tabled at the start of the meeting onto which the salient points raised and answered during the discussion are minuted by the duty officer in brief notes. This form can be sent to the enquirer prior to the discussion where possible.
- (b) The notes on the form are to be initialled by the enquirer and the duty officer at the end of the discussion. The form will be retained by the District Council and a photocopy given to the enquirer.
- (c) The top of the form will have a simple statement setting out the following:
 - (ii) the context of the discussion;
 - (iii) the responsibilities and limitation of the duty officer's position;
 - (iv) that all comments by the officers are without prejudice to any subsequent decision;
 - (v) that the duty officer may not be the case officer in the event of an application being made;
 - (vi) that the enquirer's comments and minuted notes will not be revealed to any other party including elected Members (although an explanation will be given as to the role of the elected Member and the enquirer can choose to involve that (local) Member and/or the Chairman of the Development Control Committee. The request to involve the (local) Member and/or Chairman will be included within the written notes.)
- (d) At the end of the discussion, the duty officer will ensure that the status of the discussion is fully understood by the enquirer and that his/her initials will indicate that understanding.
- (e) The minutes of the discussion will be filed and attached to a site reference on the basis of an OS map reference (to avoid confusion by any changes to site dimensions, name or ownership). This reference is to be linked to the GIS file.
- (f) In the event that at any time subsequent to the pre-application discussion the comments in the minutes become materially pertinent to the site or the vicinity, the case officer shall inform the Chairman and the Strategic Services Director. If, at their discretion, the local Member(s) is informed, so shall the enquirer be. If the

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local Member wishes to reveal the minutes to other parties, including the minor authority, he/she is encouraged to seek the advice of the Chairman and the Strategic Services Director to ensure that there will be no wider compromise.

Delegated Powers/Authority

The arrangement should be that if a case officer wishes to make a decision under delegated powers, he/she must contact the local Member(s). There have been difficulties in the past with unavailability of Members, but with e-mail and mobiles phones this problem should diminish. The problem can be reduced still further if Members ensure that they inform the case/area officer of their holiday (or any other absence) dates, and indicate a time or a regular day when they can be contacted. On the part of the case officer, they should try to contact the local Member(s) as soon as they are aware of the likelihood of an impending delegated power decision so that the local Member(s) has some time to familiarise themselves with the site.

The government imposed pressure to meet planning targets is of major importance, not just for the standing of the Council, but also for the planning performance grant. Officers and local Members alike must act responsibly to minimise the potential for needless delays.

Committee Reports

The presentation of reports should include the following features:

- (a) Summary of policies concerned with indications of their status.
- (b) List of SPGs, village design statements etc.
- (c) Degree of Weighting for each of the above in respect of specific application.
- (d) Table of **ALL** statutory consultees with boxes for inclusion, date of contact, date of response plus space for non-statutory consultees/local Member etc.
- (e) Discussion should as far as possible, relate to policies in combination with the weighting.
- (f) Conclusions should be clear, but where the officer's recommendation is "in the balance", the reasons should be clearly indicated.
- (g) Reasons for a contrary view to the officer's recommendation should be listed – to be drawn from a published list of reasons for refusal/conditions for consent as appropriate.
- (h) Where a recommendation is very finely balanced, the use of an open recommendation should be encouraged.

The interaction between local Member(s) and officers during the preparation of the report must be improved, but there must be an acceptance for the need for brevity and the target dates in the application process. On the one hand Members cannot be available "on demand" for any number of reasons and clearly the same applies to Officers. In the case

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of the latter, constant interruptions are extremely disruptive and at the very least aggravate problems with concentration and consistency.

A protocol of contact times and behaviour should be devised so that officers can be assured of periods of time without interruptions, and Members must be more disciplined in their approach. (e.g. waiting until they have a reasonable perspective of the application rather than making a separate enquiry as each point occurs to them.)

Members

The democratic involvement of Members is a statutory duty – one that cannot be avoided. It should therefore be a positive and constructive contribution. The reason that Member involvement can be so negative at times (both for and by the Members) is for the most part, a lack of knowledge and familiarity of the system. Specific expertise in the interpretation of policy comes with experience. Given that full professional training gives rise to a “novice” and inexperienced planning officer, frankly it is doubted that there is little more than guidance that can be given to Members in this respect. However, that guidance can still be given in-house and to make it more efficient, informal discussion groups can be organised where there are specific concerns.

Where Member training should be formalised is in respect of the role a Member has within the planning system. To that end a brief for focussed and specific intensive training, combined with a concise manual, must be devised as a matter of urgency, and for that training to be mandatory.

If Members are knowledgeable, they can more easily develop the confidence to stand their ground, be it with applicants, objectors and their minor authority. The commonest “mistake” is for a local member to take a stance on an application too early. By all means take that stance when all the pertinent information is presented, but until that time, the role of the member is to facilitate the planning process for EVERYONE involved.

Officers

No one is perfect and officers make mistakes just the same as anyone else. As professionals they are expected to make fewer mistakes, and this will be bolstered if the atmosphere is one more of teamwork than contest. Disagreements must be dealt with professionally and dispassionately – anything else brings a breakdown of the process. The training for members must also be given to officers, either separately or (preferably) together, so that a mutual understanding develops – far too many assumptions are made. A major improvement to officer performance will arise from the “contact” protocol.

General points

A greater awareness of the consequences of planning decisions should be engendered. At present this is largely absent from the national planning scene, let alone SDC. SDC is also quite forward-thinking in having an Agents’ forum, perhaps members should attend from time to time to listen to the views of professionals on the “other” side (a good many began as local authority planning officers).

Site visits are valuable but very time consuming. If their potential is to be considered as a regular part of the DC Committee process, the timing and logistics deserve detailed study. Site meetings have served this Council well. Perfunctory ratification of the

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recommendations of site meetings is not always the case. SDC's procedure for site meetings have been applauded by DoE and ODPM, and the current shortcomings are more to do with "human" issues. If the procedure is to be changed, a replacement procedure must be fully agreed beforehand.

For an application to reach committee it will be contentious in one way or another. Of those, very few actually cause real difficulties and a sense of perspective must be maintained.

The most essential criterion is objectivity. This is not just to do with the consideration of the details of an application but also applies to the process which has to be overt and impartial.

It does not matter what the subject matter is, there are always, but always, at least two sides to every story – planning is no different.

Cllr. Quaife

APPENDIX B

Area Committees

Tonbridge & Malling BC (rated excellent) operate 3 area DC Committees. The committees don't follow proportionality rules as the membership of each committee comprises all Members in the area concerned. Each committee meets monthly. Public speaking is allowed. No limit on number of speakers for or against an application. The Chairman looks to local Member to move any motion.

Horsham BC (also rated excellent) operates 2 area DC Committees. By a resolution of the Council the committees don't follow proportionality rules and the membership of each committee comprises all Members in the area concerned. Each committee meets monthly. Public speaking is allowed. Up to 4 speakers against an application, plus the parish council and the applicant. Each speaker is allowed 2 minutes. Planning Officer introduces application, then public speaking, local Member(s) speak then general discussion. Any motion is then usually moved by a local Member.

Wealden DC (rated good) operates 2 area DC Committees (12 Members each) which follow proportionality rules. Each committee meets monthly. Public speaking is allowed. Up to 2 speakers against and 2 in favour of an application. Each speaker is allowed 2 minutes. Officer introduces application, then public speaking, local Member(s) speak, then general discussion. Local Member, even if member of committee, cannot vote.

If two area committees were to be created, the membership of the committees would have to follow proportionality rules unless a decision were taken by the Council to opt out of that requirement and no Member voted against that decision.

If three (or more) area committees were to be created, they would not have to follow proportionality rules if:

All the voting members of an area committee were Members representing wards wholly or partly within that area; and

- either: (a) that area does not exceed two-fifths of the total area of the Authority; or
- (b) the population of that area does not exceed two-fifths of the total population of the Authority.