

# MODERN LOCAL GOVERNMENT GROUP – 12<sup>TH</sup> SEPTEMBER 2007

## LATE INFORMATION SHEET

Members should retain this information for the continuation meeting of the Modern Local Government Group to be held on Wednesday, 19<sup>th</sup> September 2007 at 5.30 p.m. in the Conference Room. This information should also be retained for the meeting of Council to be held on 25<sup>th</sup> September 2007.

### Item No. 4 – Development Control Protocol

**It is very important that Members refer to the relevant minute of the meeting of the Modern Local Government Group held on 12<sup>th</sup> September 2007 which will be published shortly.**

Please find attached the following documents:

Attachment 1 - The most up to date version of the Development Control Protocol. (pages 2-19)

Attachment 2 - Comments from the Development Control Members' Working Group made following consideration of the Head of Development Services' report to the meeting of the Modern Local Government Group in July 2007 together with the Head of Development Services' response. (pages 20-32)

Attachment 3 – Cllr. Walshe's notes from the meetings with the Head of Development Services. (page 33)

Attachment 4 – The Head of Development Services' report. (pages 34-37)

# **DEVELOPMENT CONTROL PROTOCOL FOR MEMBERS AND OFFICERS AND PROCEDURE AT COMMITTEE MEETINGS AND SITE MEETINGS**

**Revised 9.1.07/19.1.07**

## **1. INTRODUCTION**

- 1.1 This protocol states and reinforces the principles that underpin the 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 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 Head of Development Services 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 are considered and determined by the Development Control Committee.
- 1.5 The Members of the Local Planning Authority are elected to represent the interests of the whole community in planning matters. When determining planning applications they must take into account planning considerations only. These can include views expressed on relevant planning matters. However, local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons and where these are considered by the Development Control Committee it is the Members that ultimately make the final decision on planning applications, after taking due account of the advice given by professional officers.
- ~~1.6 It is important that elected Members receive open and impartial professional advice from their Planning Officers. Members should make planning decisions on the basis of the Officer's written report and should have good~~

~~reasons, based on land use planning grounds if they choose to resist such advice and make a decision contrary to the Officer's recommendation.~~

- 1.7 Throughout this document it is expected that Members will be guided by the Council's Code of Conduct with particular reference to declarations of Interest.

## **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 Officers and Member.

## APPENDIX A

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

### 3. PRE-APPLICATION DISCUSSIONS

- 3.1 Members can influence future development through ~~involvement~~ being involved at the pre-application stage. Planning officers must consider the potential for local Member input and use common sense in contacting all interested Members on any development proposals that might reasonably be considered controversial or sensitive.
- 3.2 Full discussions about planning applications are strongly encouraged between local Members and case officers on a case-specific basis. However, recognising that Officers' and Members' time is very precious, an e-mail or phone call alerting local Members to any possible controversial pre-planning application discussions would be adequate ~~(in some cases the confidential interests of the potential applicant will need to be respected)~~. 3.3 Officers would be expected, upon receipt of an enquiry from a local Member in relation to a specific site to discuss details with that Member of any contact with a potential developer albeit that these discussions were at a pre-application stage.
- 3.4 Potential applicants should always be advised that the final decision on any application ultimately rests with Members through the Development Control Committee. Officers and Members should make clear ~~avoid giving the impression~~ that the advice given to potential applicants does not ~~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 sensitive case or 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) regularly ~~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 informal and not governed by the statutory provisions of the Town and Country Planning Act. In order to ensure that an open discussion ensues, the enquirer (not applicant at this stage) must be given the opportunity to identify any matters that give rise to commercial confidentiality. It is recommended that the ideal model set of following procedures be used where practicable as per Appendix B adopted:

#### APPENDIX B

##### Reception Duty Planner Enquiries

- (a) A standard enquiry form should be available at ~~must be tabled at the start of~~ the meeting onto which ~~all~~ salient points raised and answered

during the discussion can ~~will~~ be recorded by the duty officer in brief notes;

- (b) Any ~~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;
  - (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 enquiry form will be filed with a site (141) reference (to avoid confusion by any changes to site dimensions, name or ownership) this enquiry note to be recorded in the Uniform system against the site record.

#### Formal Pre-application Meetings

- (f) In the case of formally arranged pre-application meetings (either at the office or on site) it is important that an accurate record of the discussion is made and this should set out the following:
  - (i) the context of the discussion;
  - (ii) the nature/extend of the draft proposals;
  - (iii) the relevant planning policies, considerations, and issues that apply;
  - (iv) the views and comments made by those present at the meeting as far as relevant to the matters under discussion.
- (g) At the end of the meeting the Planning Officer present will ensure that the status of the discussion is fully understood by the potential applicant/agent. The draft meeting note should be made available to all parties at the meeting so that they may comment and/or amend as necessary as an agreed record of the discussions.

- (h) The minutes/note of the meeting will be filed with a site (141) reference (to avoid confusion by any changes to the site dimensions name or ownership). The meeting note to be recorded in Uniform system against the site record. ~~(end of Appendix B)~~

## **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 briefing 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, recognising that 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 accurate in identifying all valid applications received, 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 Public Access is an important source of information for Members, the public and applicants/agents and therefore it should be scrupulously maintained.
- 5.3 There is a need for consistency in the clear display of 'orange' site notices, as set out in the adopted relevant DC Practice Note. An accurate record that a site notice is required should be identified within the Uniform system together with a record of the date when the notice was posted. Officers to check notices are correctly displayed when undertaking their site visits.
- 5.4 Neighbour notification should be carried out in accordance with the adopted relevant DC Practice Note. All neighbours who are likely to be directly affected by the application should be identified to receive a neighbour notification letter. ~~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 the potential to be directly affected.~~ A record of all those notified will be maintained within the Uniform system.

- 5.5 Site visits by Officers are essential to ensure that all parties who ought to be notified of an application have been correctly identified and as such will receive a neighbour notification letter. Any additional neighbour notification will be carried out following the site visit.

## **6 CONSULTATION**

- 6.1 There is a need to ensure that all affected parties are notified of a planning application. In accordance with recognised 'best practice' the Council's consultation procedures exceed the statutory minimum required. A record of all parties consulted will be maintained on the Uniform system.
- 6.2 A proper, and reasonable timescale should be given for comments and a copy of the application documents should be provided to statutory consultees as appropriate.
- 6.3 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.

## **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 If an Officer routinely works at home on a certain day each week, then this information should be made available to Members. Members who wish to contact an Officer who is on site, or working at home, will contact the relevant Development Control Team so that a message can be passed to the relevant Officer to contact the Member in order to deal with their enquiry or concerns.
- 7.4 Officers and Members need make sure that queries, calls and e-mails are responded to as quickly as possible.

## **8. ASSESSMENT**

- 8.1 Local Members have a duty of care 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. Any contact by a Local Member will be recorded by the Case Officer.

8.2 If a Member makes clear his/her interest in an application the Case Officer should offer a briefing 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.~~

**9. AMENDMENT OF APPLICATIONS** If a Member has expressed an interest in an application he/she should be informed when an amendment to that application is sent out for further consultation. . Members should not unreasonably/unnecessarily hold up the planning process over minor amendments to an application. Members should always react and respond quickly.

9.1 ~~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 assessment of an amendment the application in its revised form should continue to be processed in accordance with normal procedures of consultation before a determination.~~ **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(s) for their consent. Similarly Member's consent must be sought if a Member has expressed a prior concern with the specific application, even if the town/parish council have no objections. In relation to multi-Member wards, all Local Members should ~~must~~ be consulted, ~~h~~However, only one Member's objection is required for the decision to be referred to the Development Control Committee. Recognising that it may be difficult to contact some members within a reasonable time. should this not be possible within 14 days then , in the case of three-member wards, the decision of two members shall be adequate for the case officer to proceed with a delegated decision.

10.2 Members should inform Officers as soon as possible if and when they wish to call an application to the Development Control Committee. Members should be given a copy of the ~~draft~~ report 48 hours before publication, if requested, on a confidential basis, solely ~~as~~ to draw any factual matters to the attention of the Officer.

## **11. REPORTS**

11.1 Draft reports to Development Control Committee should be produced in accordance with the relevant DC Practice Note.

11.2 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 either for approval or refusal. ~~or an open recommendation in the rare event where an application is requires~~ However, where the recommendation is a finely balanced decision, this should be clearly reflected in the report.
- all relevant documents, including the Regional Spatial Strategy, Structure Plan, Local Development Plan or Framework and Planning Policy Statements/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 may inspect application files at the District Council offices at Argyle Road during normal office hours by prior arrangement to ensure the availability of the files for the Members' visit..

## **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.
- 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 and/or brief another Member who does not serve on development Control Committee to present their case to the Committee. Officers should not be expected to prepare a full committee report if the Member or their representative 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. It therefore follows that Members of the Committee when moving for a decision contrary to recommendation should be ready to advance adequate reasons before a vote is taken.

#### **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.*
- (4) *It is incumbent on Members of the Committee to ensure that they remain impartial and receptive to all points of debate before reaching a decision to vote on an application.*

- 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 ~~should~~ ~~are strongly advised~~ to remain at meetings of the Committee until the end of the meeting unless they have a compelling reason not to do so. ~~If 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.~~
- 14.3 Where a planning application has been submitted by the District Council and the appropriate Cabinet Member (responsible Portfolio Holder) 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. Members should also be informed when an application on Council-owned land is to be considered by the Committee even if the applicant is not the District 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 confirmed/agreed by the Committee and that any Member may reiterate their views 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 Head of Development Service'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 or variations to existing permissions; and
  - (v) objections to Tree Preservation Orders.

14.6 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.
- (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 have an opportunity to make a short introduction referring to the material planning considerations. The Officer may will then comment speak in respect of any issues that arise from the debate but will not enter into the debate. ~~at the discretion of the Chairman.~~
- (e) the Chairman will invite the Vice Chairman to open the debate by moving a recommendation. This does not preclude a motion of recommendation, contrary to the Officers recommendation, being made. (Subject to the provisions of paragraph 15 below).

- (f) The local Member(s) (whether or not a member of the Committee) will be invited to speak *and* will have prescribed 4 minutes speech time at the beginning and at the end of the debate (the time limit will be subject to the Chairman's discretion). (Normal rules relating to motions and amendments as set out in the Constitution apply.)
- (g) Normal debate/discussion will then take place.
- (h) 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.
- (i) 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 amendment not to vote.
- (j) 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.
- (k) The vote will be taken after the Vice Chairman, or the mover of the motion, has summed up. The Chairman will advise the meeting on the result of the vote including whether planning permission has been granted, refused etc.

## **15 DECISIONS PROPOSALS CONTRARY TO OFFICER RECOMMENDATION 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 Team Manager as soon as possible, and in any event before the Chairman's briefing. 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, may ~~should~~ contact the appropriate Area Team Manager or the Head of Development Services ~~as soon as possible~~. This will enable the matters to be discussed at the Chairman's briefing, that normally takes place on the Monday 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.

~~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.~~ 15.2 On receipt of notice from a Committee member, the Area Team Manager 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 matters which require a visual assessment, ~~amenity~~, the Area Team Manager or the Head of Development Services may discuss the desirability of arranging a Committee Site Inspection with the Chairman. Members are encouraged to attend these Site Inspections whenever possible.

15.3 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.

15.4 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 (whose sole decision it shall be whether to accept that recommendation) 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.

15.5 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 the Committee has made a decision contrary to Officer advice, the appropriate Local Member or a member of the Committee is expected to be actively involved in the Appeal if by written representation and to attend any Hearing or Public Enquiry when such is held.

## 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"~~

16.1 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 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.

- 16.2 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.
- 16.3 If a report is withdrawn or deferred without the opportunity for a registered public speaker to present their views then the public speaker(s) will be given the opportunity to address the Committee when the item is re-presented for decision.
- 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.

## **17. CONSTITUTION OF SITE MEETINGS**

17.1 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.
- (c) In the event that a quorum of those Members is not present the remaining members will proceed to inspect the site and provide an informal report to the Committee without recommendation.

- 17.2 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;
- 17.3 The local Member(s) shall be invited to attend the site meeting but without voting rights; and
- 17.4 Anyone who has made representations about the development shall be invited to attend the site meeting.

## **18. PROCEDURE AT SITE MEETINGS**

- 18.1 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;
  - (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.
- 18.2 The Chairman of the meeting will open it with introductions of those attending and will explain the procedure for the conduct of the meeting.
- 18.3 The Chairman will ask any members of the District Council present to declare any interests they may have.
- 18.4 The Community and Planning Services Director (or representative) will explain the proposal.
- 18.5 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

- 18.6 The Chairman to invite the following interested parties to ask questions and to 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.
- 18.7 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.
- 18.8 All attending will be asked if they have any further new comment to add.
- 18.9 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.
- 18.10 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.

## **19. APPEALS**

- 19.1 In the event of an appeal being lodged against a refusal of, or failure to determine a planning application, Local Member(s) will be advised including the intended method of procedure. Local Members wishing to comment on the appropriateness of the method of procedure should contact the Head of Development Services and discuss the specific case. Local Members will be consulted on the content of any draft appeal submission made on behalf of the Council to the Planning Inspectorate in respect of appeal cases they have identified of interest to them.

- 19.2 The local Member(s) should have dialogue with Officer on the general grounds for an appeal and the Council's defence of that appeal.
- 19.3 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. .
- 19.4 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.

**GLOSSARY:**

|                  |   |
|------------------|---|
| Local Members    | Any occurrence of this term means the Member(s) representing a ward plus any other Member who has <del>expressed an interest</del> <u>a direct interest, such as a Member representing an adjacent ward.</u>  |
| Enquirers        | Potential applicants  |
| 141              | This is the property reference for a site that has been the subject of general or pre-application enquires. Every enquiry is logged with a reference that begins 141, then includes the year the property was first put on this system, and a number based on whether it was the first or twenty first reference created that year. |
| Briefing         | When an Officer contacts a Member by phone, e-mail or with a meeting to update them on planning issues.   |
| DC Practice Note | These are internal documents setting out procedures and guidance for DC staff on a variety of issues. When revised to check they accord with this protocol, they can be made available electronically in a dedicated Working Groups folder, that all Members can access.  |

### **Introduction by the Head of Development Services**

The Development Control Protocol has been the subject on a number of changes over the last year, following the last Modern Local Government Group meeting it was envisaged that the Members DC Group would meet with the Head of Development Services. Unfortunately no meeting took place with the group but written comments were circulated to the group by the Head of Development Services and two short meetings have now taken place between Cllr Walsh and the Head of Development Services to discuss the groups views of the written comments.

Set out below are the written comments, the DC groups view of the written comments and the further response of the Head of Development Services.

Note : a line has been introduced between each section to make to add clarity

### **Comment by the Chairman of the Development Control Working Group**

*All the points raised have been dealt with by the Development Control Members' Working Group, whose comments and proposals are set out below under each heading (in bold italics)*

Following MLG 19<sup>th</sup> July 2007: Set out below is an expansion on the issues highlighted in the MLG report for consideration by The Development Control Group of the Environment Select Committee.

Note: I have used the points set out in the MLG report as my base.

### **Proposed Areas for Amendment by the Head of Development Services**

#### **1 To expand the introduction of the Protocol to set the scene, in terms of the role that both Members and officers have to play in the Development Control process.**

“The purpose of the Protocol is to assist both Members and Officers to work together to ensure that the needs of the community are met within the legal and policy framework of planning. Members and Officers have separate but equally important role to play in this function. The protocol is not intended to detail all development control procedures as the development control procedure manual provides detailed policies and procedures for dealing with all aspects of development control.”

#### **Response from the DC Working Group :**

Add to 1.1 ‘It will assist both Members and Officers to work together to ensure that the needs of the community are met within the legal and policy framework of planning. Members and Officers have separate but equally important roles to play in this function.’

References to the Officers’ development control manual would not be appropriate in this document.

Response by the Head of Development Services to the comments from the DC Working Group :

No further comments

Response from the DC Working Group :

**2. To expand on the different but essential roles of the officers and Members both in general and specifically in relation to Committee.**

Please refer to Section 5 of LGA Probity in Planning update 2002

It was not considered to be necessary as much of this would be repetitious or out of place in this document.

Response by the Head of Development Services to the comments from the DC Working Group:

It is disappointing that this is not being included.

**3. To take out detailed working procedures that will be contained in the Development Control Manual that is currently being produced.**

References to practice notes, consultation on planning application etc

Response by the DC Working Group:

It would not be helpful to eliminate relevant parts of the document which contribute to its purposes. No doubt the development control manual will fit into this framework.

Response by the Head of Development Services to the comments from the DC Working Group:

No further comments.

**4. To address issues related to predetermination. This would be based on the guidance set out in the Local Government Association 'Probity in Planning Update 2002' including a section on the Lobbying of Councillors-**

(LGA Probity in Planning para. 6:11 and section 8)

Response by the DC Working Group:

It is felt that all issues of probity are adequately covered by Clause 1.6

Response by the Head of Development Services to the Comments from the DC Working Group:

In a document of this nature this is a significant omission.

**5. Remove all reference to proposed motions to overturn proposals being discussed at chairman's briefing (para15.2) to avoid any issues related to predetermination of applications. –**

see para. 8:10 of LGA Probity in Planning

Delete- 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 .....)

Response from the DC Working Group:

It seems that this is helpful both to the Chairman and Officers. There is no element of predetermination in this procedure which should therefore be retained.

Response by the Head of Development Services to the comments from the DC Working Group :

These are extremely concerning paragraphs as they both appear to formalises a committee members view therefore appearing as pre determination and gives the perception that decisions are being made behind closed doors. It is not appropriate for officers to provide Members with reasons etc before a meeting. The following paragraphs should be deleted:

“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, may contact the appropriate Area Team Manager or the Head of Development Services. This will enable the matters to be discussed at the Chairman's briefing, that normally takes place on the Monday 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 15.4 On receipt of notice from a Committee member, the Area Team Manager 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 matters which require a visual assessment, , the Area Team Manager or the Head of Development Services may discuss the desirability of arranging a Committee Site Inspection with the Chairman. Members are encouraged to attend these Site Inspections whenever possible.”

**6. To include legal advice on registration and declaration of interests and development proposals submitted by Officers and Members, as Planning and Development Control are functions where the Code of Conduct has a particular relevance. (Members are asked to note the point under para. 13 re change to Code of Conduct implications). –**

The head of Committee and Legal Services can advise on how this has changed in the new Code of Conduct. However, for members information, section 6 of LGA Probity in Planning update 2002 refers to this.

In addition, the Head of Legal Services previously submitted paragraphs:

**“Registration and Declaration of Interests**

*It is a fundamental point of principle that decisions should not be made by those who have a significant interest in the outcome.*

*A Register of Members’ Interests is maintained by the Council’s Monitoring Officer, which is available for public inspection. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.*

*Even though a Member has declared their interests in the Register of Interests the Member still needs to declare interests at all meetings including the Development Control Meeting where the matters being discussed, or to be discussed affects the Member’s Interests. A Member attending a Development Control Meeting still needs to make such declarations even though the Member may not be a Member of the Development Control Committee.*

*As a first step, the Member needs to declare any personal interests the Member has in a matter. The Member will then need to decide if the interest is also prejudicial.*

*The Member will have a personal interest if a decision might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants in the authority’s area, the well-being or financial position of themselves, a relative or a friend, or*

*any employment or business carried on by such persons;*

*any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;*

*any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or*

*any body which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.*

*Where a Member considers he has a personal interest in a matter he must declare that he has a personal interest, and the nature of that interest, before the matter is discussed or as soon as it becomes apparent to the Member. However, the personal*



*interest does not debar the Member from participating in the discussion or voting on the matter unless the interest is also prejudicial.*

*A prejudicial interest is one which a member of the public who knows the relevant facts would reasonably think is so significant that it is likely to adversely affect the Member's judgement of the public interest. If a Member has such an interest, he must declare that he has a prejudicial interest, and the nature of that interest, and then leave the room. The Member cannot take part in discussions on that matter or try to improperly influence anyone's decision on the matter.*

*It is important that the Member leaves the room so the Member and the authority are seen to be acting in an appropriate and unbiased way, and to remove pressure from the remaining Members.*

*The Code of Conduct for Members does include some exceptions to this rule. For example, if the matter under discussion relates to:*

- *another authority of which the Councillor is a Member;*
- *another public authority in which the Councillor has a position of general management or control;*
- *a body to which the Councillor has been appointed or nominated as a representative of the authority.*

*Then, in these circumstances, the interest may not be regarded as prejudicial. In practice, therefore, the Member would need to declare the interest, but could participate.*

*The Member's Code of Conduct applies whenever the Councillor is conducting official business, which will include site visits. The Standards Committee of this Authority has recommended that declarations of interests should be made at planning site meetings.*

*If a Member is in doubt about whether a declaration of interest needs to be made the Member should seek the advice of the Council's Monitoring Officer. District Council Members who are also Parish or Town Councillors are referred to the Standards Board for England's Guidance entitled "Lobby groups, dual-hatted members and the Code of Conduct". Members should be aware that Planning Decisions in particular are vulnerable to challenge by way of judicial review if Members who are biased or have a prejudicial interest have participated in them or if Members have pre-determined the outcome.*

### **Development Proposals Submitted by Councillor and Officers**

*Serving Councillors and Officers should not submit or promote applications or act as agents (paid or unpaid) for individuals including a company, group or body pursuing a planning matter. If Councillors or Officers submit their own development proposal to the Council, they should take no part in the processing. The Council's Monitoring Officer should be informed of all such proposals as soon as they are submitted.*

*Proposals for the Council's own development or development involving the Council and another party should be treated in the same way as those by private developers. The same administrative process should be carried out in relation to the Council's*

*own planning applications, and they should be determined against the same policy background. Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.*

*Proposals submitted by Councillors and Officers should be reported to Committee and not dealt with by Officers under delegated powers. As part of the report the fact that the application is a Councillor's/Officer's should confirm whether it has been processed normally."*

Response from the DC Working Group:

It has been agreed with the Head of Legal Services that Clause 1.6 is adequate if amended to add the word 'current' before 'Code of Conduct' to take account of changes.

Response by the Head of Development Services to the comments from the DC Working Group:

No comment as the Head of Committee and Legal Services has been consulted.

**7. To expand the guidance in relation to decisions contrary to the development plan and overturning officer recommendations. This should include amendments in relation to the officer assistance (i.e. supplying the relevant planning policy references when the Member has identified the planning reason and harm).**

Please refer to Section 5 of LGA Probity in Planning update 2002

Response from the DC Working Group:

Interpretation of the development plan may vary between committee members and officers. It would not be appropriate to give guidance on this.

Response by the Head of Development Services to the comments from the DC Working Group:

All planning decisions should be based on the policies of the development Plan and if not other material considerations need to be clearly identified. The implications of overturned planning recommendations were a significant issues at North Cornwall and in the Nolan report into Standards. Therefore this is also a significant element in the Local Government Association Probity in Planning update 2002. Therefore guidance in these areas should closely follow LGA probity in planning.

**8. To amend the requirements of the Protocol in relation to officers' delegated powers i.e. to change it from the position where if officers cannot**

**obtain a view from Members the application will default to going to committee to a position where it will default to being delegated. This would address issues such as Members being unavailable due to illness and holidays.**

The purpose of this is a very practical step to address what has been an issue in the determination of applications. There have been cases where Members have gone on holiday or have been taken suddenly ill and either application have had to go to committee or officers have relied on the other 2 members in a ward. In addition, officers currently take a pragmatic approach and Members have a variety of informal arrangements but there needs to be a consistent and formal approach. The proposed 21 days in the draft Protocol would significantly hold up the determination of applications. A formalisation of withdrawing from the requirement should also be addressed in the delegated powers.

Response from the DC Working Group:

Members have great concerns at the suggestion to default this decision to officers rather than other members. We propose instead to change from the existing 21 days in Clause 10.1 to 14 days as a limit before default to the Chairman or Vice-Chairman of Development Control Committee as to whether or not an application should go to committee.

Response by the Head of Development Services to the comments from the DC Working Group:

Any reduction in the time period in this area is to be welcomed.

**9. There are however additional issues that have been identified as affecting the Protocol and should be considered to ensure that it is up to date when it is published. These additional issues are:**

**Review the English to make it plainer.- recommendation of MLG**

Response from the DC Working Group:

This is not felt to be necessary

Response by the Head of Development Services to the comments from the DC Working Group:

No further Comments

**10. To take on board ideas and practices contained in the Department of Communities Local Government (DCLG), Councillor Involvement in Planning Decisions, January 2007 e.g. improved and formalised Councillor involvement in pre applications proposals in terms of a Development Control Forum or an event related to a major planning proposals.**

### Response from the DC Working Group:

This protocol already takes advantage of all relevant suggestions in the DCLG paper.

### Response by the Head of Development Services to the comments from the DC Working Group:

This is an opportunity to clearly set out to the Councils approach so that Councillors, officer and the public know what is acceptable.

### Continuation of initial recommendation by Head of Development Services:

Suggest including a paragraph that indicates the acceptability of being involved in Major proposals in a transparent way. Including this will assist all parties in understanding the way Members can be involved and kept informed of major development proposals/application at the earliest stage The following is a suggestion:-

#### **“ Development Control Public Meetings/Forums/Events**

*In the case of ‘major development’ proposals which are likely to raise issues which are sensitive to the wider community a development control forum may be appropriate.*

*A Development Control Forum is a public meeting, where a developer is able to explain proposals directly to the Councillors who are likely to be involved in any decision on a subsequent planning application. It also enables the public and key stakeholders to hear about proposals at an early stage.*

*Its prime purpose is to identify issues that an application will need to address, at a stage where this is still possible; it is not a forum for negotiation. Councillors are expected only to seek clarification, not to voice opinions about the merits of the proposal. At the end of the meeting/event, the aim is to establish a consensus on the important issues, which is recorded in writing and publicised.*

*The DC consultative forum formalises and legitimises pre-application contact between applicants, officers, Councillors and members of the public. Its is intended to be open and transparent.”*

It may also be appropriate to add in a paragraph about presentations by developers of major development proposals to officers and members ( a much more straight forward approach to that outlined above).

### Response from the DC Working Group:

The DC Forums suggested may be appropriate in certain circumstances but do not need to be detailed in this protocol as circumstances and needs may vary greatly. It is suggested that this could be covered by a practice note for officers.

Response by the Head of Development Services to the comments from the DC Working Group:

This is an opportunity to clearly set out to the Councils approach so that Councillors, officer and the public know what is acceptable.

**11. To update the Protocol to accord with changes that are being undertaken in the Development Services Review.**

Amending terms e.g. DC Practice notes and deleting detailed working procedures

Response from the DC Working Group:

We suggest that the Protocol should be regularly reviewed every few years or when a change in law takes place.

Response by the Head of Development Services to the comments from the DC Working Group:

Practically the wording needs to be changed as DC practice notes no longer exist as the Manual will replace these and a number of working practices have changed e.g. Duty Planning officer.

**12. To update the Protocol in light of the proposed new Code of Conduct that will be introduced in September.**

Head of Committee and Legal Services to advise

Response from the DC Working Group:

The Head of Legal Services has already advised with regard to Clause 1.6 (see above).

Response by the Head of Development Services to the comments from the DC Working Group:

No further comments.

**13. To expand advice for officer in terms of report content.-**

see section 10 of LGA Probity in Planning update 2002

Response from the DC Working Group:

We believe that Para 11 is adequate

Response by the Head of Development Services to the comments from the DC Working Group:

No further comment.

**14. To include a section on the training of Councillors and Officers.-**

Para. 5.9 LGA Probity in Planning

Response from the DC Working Group:

Training is a topic that would be out of place in this document

Response by the Head of Development Services to the comments from the DC Working Group:

No further comment.

**15. Officers would also recommend the following changes to improve the current process or revise a previous discussed proposal:**

- **The format of the delegated powers be reviewed to ‘front load’ Member involvement to improve case management, improve contact with Members and reduce stress on Officers. An example of ‘front loading’ would be to bring forward Members decision to refer the matter to Committee to the beginning of the process, e.g. within 28 days of notification of the application.**

This proposal is to change the delegated powers to seek the involvement of Members early in the process, within the first 28 days ( after the 21 days the Parish and Town Councils receive). This would enable case officers to understand the Member issues early and project manage applications better. This would not necessarily result in the application having to go to committee as the Member could withdraw the committee instruction. The working procedure behind this should be the basis of further discussion.

Response from the DC Working Group:

This suggestion is unclear but would appear to be a major change and should be treated as a separate discussion – particularly with possible implications of predetermination. The building of a new process such as is suggested may or may not be of benefit to the way in which this council handles applications. This protocol is intended to clarify and smooth the passage of existing procedures and no doubt a revision could in due course be made if there is to be an agreed change in the

process.

Response by the Head of Development Services to the comments from the DC Working Group:

No further comment.

**16. Members desire to review the reports for factual checking 48 hours in advance of the agenda being finalised for print be omitted. This would require the agenda being brought forward beyond the 4 week lead in period and significantly impact on officer workload.**

As stated above, 15.2 be deleted. However a paragraph be inserted addressing the issue of factual inaccuracies as these can be picked up on the late obs or the whole item deferred by the Head of Development Services from the agenda to be reviewed

*“ Prior to the committee meeting if members identify any inaccuracies in the report they should identify them to the team manager, Development Control Manager or Head of Development Services.”*

Response from the DC Working Group:

15.2 is regarded as an important means of ensuring that public documents are accurate in their content and to save embarrassment for the Council.

Response by the Head of Development Services to the comments from the DC Working Group:

This is not practically possible as it will significantly affect service delivery.

**17. Include an additional paragraph on the procedure for Late Observations.**

There is no reference to late obs and it is a significant part of the process. I suggest the following:

“The Chairman and Committee will be provided with the “late observation report” by officers this will contain a summary of all correspondence or information related to the application on the agenda received after the agenda was completed **and not already circulated to members of the committee and local member(s)** This is required to ensure that the information that the committee are basing their decision upon is up to date and that there are no unnecessary delays in the decision making process. Officers should ensure that any further information is summarised and commented upon and that the quantity of information is kept to a minimum.

Response from the DC Working Group:

Agreed and modified to the above.

Response by the Head of Development Services to the comments from the DC Working Group:

No further comments.

**18. Attendance of a Legal officer-** LGA Probity in Planning Update 2002- para. 12.4

I suggest the following paragraph be added to the section on procedure at Development Control Committee:

Response from the DC Working Group:

Agreed with modification:

Add New clause 14.6 (e)

“The Legal Officer will inform the Chairman (unless already requested) of a need for him/her to advise the Committee in respect of any issues that arise from the debate, to ensure that the decision is based upon accurate and relevant law and to advise the committee with regard to the legal impact of any proposed recommendation.”

Other specialist officers may be available at meetings to comment on their areas of expertise when requested by the Chairman.

Response by the Head of Development Services to the comments from the DC Working Group:

No further comments



OUTCOME OF TWO MEETINGS WITH GILIAN MACINNES CONCERNING THE  
REVIEW OF THE DC PROTOCOL

**AGREED**

Addition to 1.1

No extra expansion on roles of Members and Officers

Issues of probity covered by 1.6

No need to include detailed legal advice as head of legal services considers Clause 1.6 adequate.

Delegated powers/reference to committee stay with Members and do not default to Officers, but with reduction in time to 14 days

Ideas from DCLG paper already sufficiently used – not wise to be too specific as needs vary.

Review of protocol when law changes or every few years

Code of Conduct revision dealt with – agreed with head of Legal Services to insert 'current' in front of Code of Conduct.

Report content in Para.11 should be adequate

Training needs much consideration, but not as part of the Protocol

'Front Loading' would be a new idea needing fresh procedures – however, the wording of 10.1 already partly covers this issue.

The Group's proposed modification of the reference to Late Obs

The reference to the Legal Officer as requested by the Head of Legal Services

References to Practice Notes should be eliminated as these will be replaced by a Manual for Officers

**NOT AGREED**

Members feel that it is right and proper that the Chairman and Officers at briefing should be made aware that motions to overturn recommendations may follow – this gives an opportunity to Officers to prepare . It was not felt that this implies any sort of predetermination.

The group did not agree to make reference to decisions contrary to the Development Plan. It was not felt that this was appropriate. Members know perfectly well that such decisions have to be referred to the Secretary of State whether suggested by Officers or Members, but this did not seem appropriate for this protocol

Members did not wish to abandon the clause calling for reports to be checked for accuracy where necessary, nor did they accept that this would necessitate a 4-week delay.

**MODERN LOCAL GOVERNMENT GROUP 12<sup>TH</sup> SEPTEMBER 2007**

**COMMENTS ON DEVELOPMENT CONTROL PROTOCOL**

Report of the:           Community and Planning Services Director

Status:                   Members comments are requested

---

**Executive Summary:**

The DC Protocol has been subject to considerable review by the Environment Select Committee, the Development Control Group and Officers. Issues identified in the report to MLGG of 19<sup>th</sup> July 2007 have been addressed, with two issues outstanding.

Members comments on these issues are requested.

---

**Portfolio Holder**     Cllr. Williamson

**Head of Service**     Head of Development Services- Mrs. Gilian MacInnes

---

Recommendation: Members comments are sought.

---

**Background**

1. A Development Control Protocol was agreed by Council on the 27<sup>th</sup> September 2005, this has been reviewed by the DC Working Group. Proposed amendments were put forward by the Working Group on the 15<sup>th</sup> December 2006, further amendments were then suggested by the Environment Select Committee on the 9<sup>th</sup> January 2007. The Working Group met again and made further adjustments on the 19<sup>th</sup> January 2007.
2. The Protocol was then referred to Modern Local Government Group (MLGG) on the 1<sup>st</sup> February 2007. The protocol was referred back to the Environment Select Committee on the 28<sup>th</sup> February 2007. This was referred to MLGG on the 2<sup>nd</sup> April 2007
3. A report on the Development Control Protocol was reported to Modern Local Government Group ( MLGG) on the 19<sup>th</sup> July 2007. The item was deferred to enable the points raised in the report to be considered by Environment Select Committees' Development Control Group.

**Introduction**

4. The 19<sup>th</sup> of July 2007 report to MLGG contained 18 issues to be addressed, two of which remain to be addressed. Members, views are sought on the two remaining points. (These are summarised in Appendix B).

**Points to be addressed**

5. Point 5 in appendix B refers to issues of predetermination and probity as contained in paragraphs 15.2-15.4 which are set out below:
6. “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, may contact the appropriate Area Team Manager or the Head of Development Services. This will enable the matters to be discussed at the Chairman’s briefing, that normally takes place on the Monday 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.
7. 15.315.14. On receipt of notice from a Committee member, the Area Team Manager 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 matters which require a visual assessment, the Area Team Manager or the Head of Development Services may discuss the desirability of arranging a Committee Site Inspection with the Chairman. Members are encouraged to attend these Site Inspections whenever possible.”
8. Officers are concerned that these paragraphs could create a public perception that the Council member may have made up their mind in relation to an item before having heard the whole debate in the committee. In addition, it may be perceived that the decision is made in private at briefing and not in the committee forum.
9. These paragraphs of the Protocol state that conditions or reasons for refusal should be drafted in advance of the meeting. This would be inappropriate for officers to do as the professional advice of the officers to the Committee has already been provided in the form of the report and recommendation. The advice on probity in planning states that any decisions contrary to officers advice should be clearly justified and minuted in the meeting.

10. Point 16 in appendix B refers to Members being given 48 hours after reports are agreed to check them for factual errors :

Modern Local Government Group 12<sup>th</sup> September 2007

#### **Item No. 4**

11. To facilitate the 48 hour factual report checking time for Members would require the timetable for the agenda to be brought forward by at least 2 days which would then clash with the earlier Committee that was being undertaken as the same resources are required for work in relation to both Committees, this would significantly affect the efficiency of the service.
12. Minor errors that are identified could be addressed on the Late observations and if there were any other more significant factual error the report would be deferred to investigate further and potentially redraft the report.

### **Key Implications**

#### Financial

13. Failure to adopt a protocol that follows the relevant guidance could give rise to increased challenges, ombudsman complaints, cost at appeal, judicial review and complaints to the standards board all of which would have cost implications in terms of representation and potential compensation.

#### Legal, Human Rights etc.

14. The aim of the protocol is to ensure that all decisions are made in a fair, consistent equitable and transparent manner in accordance with the law.
15. In the preparation and adoption of a protocol, it is important that Members have a record of all relevant guidance, e.g. Probity in Planning Update 2002 and it is strongly recommended that the Development Control Protocol to be made subject to such guidance and in the event of any discrepancy between the provisions of the Development Control Protocol and the guidance the guidance should prevail.

#### Resource (non-financial)

16. The only implications are officer time.

### **Conclusions**

17. The Development Control Protocol has been the subject of extensive discussion and two issues remain to be addressed. It is requested that Members consider amending paragraph 15.2-15.4 and paragraph 10.2 of the Development Control Protocol for the reasons set out in this report.

**Sources of Information:** Local Government Association Probity in planning Update 2002.

Royal Town Planning Institute Code of Professional Conduct (1 Jan. 2007).

Councillor Involvement in Planning Decisions (January 2007).

**Contact Officer(s):** Gilian MacInnes x 7313

**Kristen Paterson**  
**Community and Planning Services Director**

### **RISK ASSESSMENT STATEMENT**

If a protocol is adopted it is important that it follows the relevant guidance (e.g. LGA Probity in Planning update 2002) as failure of a Protocol to do so may could give rise to increased challenges, ombudsman complaints, cost at appeal, judicial review and complaints to the standards board all of which would have cost implications in terms of representation and potential compensation.

