

Agenda Item 8

Report to	Appointment Management and Standards Committee
Date	24 February 2021
By	Head of Governance and Support Services and Monitoring Officer
Title of Report (Decision)	Review of Local Protocol for Members and Officers Dealing with Planning Matters

Recommendation:

The Committee is recommended to advise the Authority to:

1. Agree the revised Local Protocol for Members and Officers Dealing with Planning Matters set out at Appendix I

1. Introduction

- 1.1 The Terms of Reference for the Committee include “to advise the Authority on the revision or replacement of its Code of Conduct for Members and Co-opted Members, and on the review of protocols relevant to ethical standards.
- 1.2 The **Local Protocol for Members and Officers Dealing with Planning Matters** (the protocol) is a protocol relevant to ethical standards and therefore it is presented to the Committee with a recommendation that they request that the Authority approve the revised protocol.

2. Policy Context.

- 2.1 The protocol is a key part of the Authority’s ethical governance framework, and provides guidance as to the standards expected from Members and Officers in their undertaking of National Park Authority duties.
- 2.2 At its meeting on 15 October 2020, the NPA resolved to adopt a revised Member Code of Conduct and delegated authority to the Monitoring Officer to update and republish the Local Protocol for Members and Officers Dealing with Planning Matters to reflect relevant changes agreed to the Member Code of Conduct and the Local Protocol for Member and Officer Relations.
- 2.3 Accordingly, the Monitoring Officer has updated the protocol to reflect the relevant changes. However, as part of this process, officers, including senior planning officers, have identified other desirable amendments to the protocol which fall outside of the scope of the Monitoring Officer’s delegated authority. Consequently, it is these remaining amendments which are identified below. The revised protocol is attached at Appendix I

3. Issues for consideration

- 3.1 Key changes for Members to consider include:

Ref	Change	Justification
Throughout	General updates	For accuracy and to reflect requirements and language of other governance documents and legislation
Section 2	Alternative wording proposed concerning Members' obligations under the Member Code of Conduct	The amended wording is not required to reflect changes to the Code of Conduct but is recommended to help clarify Members' obligations
1.12	Updated to closer align with statutory wording	To reflect best practice and promote consistency

3.2 If approved for recommendation by the Committee and subsequently agreed by the Authority, this protocol will be used to communicate the standards expected of Officers and Members in undertaking their duties.

4. Options & cost implications

4.1 There are no additional costs associated with the revised protocol.

5. Next steps

5.1 If the revised protocol is approved by the Authority, it will be circulated to all Members and Officers and published on the Authority Intranet and wider as considered appropriate.

6. Other Implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	Yes – the final decision on adopting the revised protocol will be taken by the Authority
Does the proposal raise any Resource implications?	None directly arising from this report
How does the proposal represent Value for Money?	The protocol forms part of the organisation's ethical governance framework, the effective operation of which contributes to the effective running of the organisations
Are there any Social Value implications arising from the proposal?	None directly arising from this report
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	There are no equalities implications arising from the review of the protocol. The protocol applies equally to all Members and officers and the associated processes connected to the protocol are accessible to all.
Are there any Human Rights implications arising from the proposal?	None directly arising from this report
Are there any Crime & Disorder implications arising from the proposal?	None directly arising from this report

Are there any Health & Safety implications arising from the proposal?	None directly arising from this report
Are there any Data Protection implications?	None directly arising from this report
Are there any Sustainability implications based on the 5 principles set out in the SDNPA Sustainability Strategy	The report contributes to principle 4 of the sustainability strategy, Promoting good governance.

7. Risks Associated with the Proposed Decision

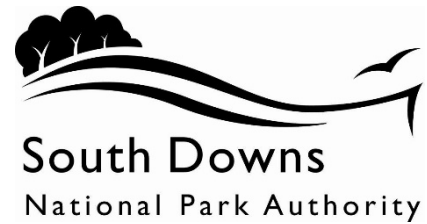
- 7.1 Failure to have a robust and up to date ethical framework increases the risk of successful challenge of the Authority's decisions. This report contributes to the mitigation of that risk.

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South Downs National Park Authority

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Appendices	I. Updated Revised Local protocol on Member and officer relationships
SDNPA Consultees	Chief Executive; Monitoring Officer. SDNPA Independent Persons
External Consultees	None
Background Documents	None



South Downs National Park Authority

LOCAL PROTOCOL FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

Review Date	March 2015
Responsibility	Monitoring Officer
Date Approved	March 2011
Approved at	SDNPA Authority meeting
With Effect From	1 January 2014
Reviewed	
Updated on	

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SUMMARY OF KEY POINTS

The detailed Local Protocol for Members and Officers Dealing with Planning Matters applies to all Members and officers, who should make themselves familiar with its guidance. The protocol applies when Members or Officers are involved in a planning matter being considered by the NPA. Host authorities are expected to have their own arrangements in place.

The main points of the guidance, cross-referenced to the detailed text, are set out below for the convenience of Members and officers. They are as follows:

- Planning is a formal process which can lead to complaint or judicial review (para 1.4);
- Compliance with the Member Code of Conduct, including the registration and disclosure of personal interests, including disclosable pecuniary interests and public service interests, and registration of any gifts and hospitality offered or received (para 2.1 – 2.17);
- Members and officers, involved in the taking of planning decisions should never act as agents for those pursuing a planning matter (para 3.1);
- Planning proposals from Members and officers must be dealt with by the Planning Committee, with the proposers taking no part in its processing (para 3.2-3.3);
- Proposals by the Authority must be treated in the same way as those from private developers (para 3.4);
- Members and officers must maintain an open mind on the merits of applications when being lobbied (para 4.1- 4.3);
- Members involved in decision making on planning should not lobby on behalf of applicants, nor commit themselves to a conclusive view on a matter, such as would indicate that their mind is closed on the matter, before all the evidence is heard (para 4.4- 4.9);
- Where Members or officers attend public meetings, they should not express any conclusive view about the merits of any proposal such as would indicate that their mind is closed on the matter (para 4.10- 4.11);
- In any pre-application or pre-decision meetings, officers must not commit the Authority to any particular decision (para 5.1-5.4). Members should not normally attend such meetings (para 5.5);
- At site visits, Members and officers must not discuss the merits or demerits of any application (para 6.1-6.3);
- Officer reports to the Planning Committee must be comprehensive and accurate, with a written recommendation underpinned by reasons (para 7.1- 7.6). Any departure from the Development Plan must be supported by justification;
- Members must not put pressure on officers for a particular recommendation (para 7.5);
- Planning decisions must be supported by clear and convincing evidence. Reasons for decisions contrary to officers' advice and/or for approval of proposals contrary to the Development Plan, must be clearly stated (para 8.2- 8.4);
- Planning Committee meetings should be conducted in a professional manner, with legal and planning officers in attendance (para 8.5-8.8);
- Members wishing to support an appellant (including the Authority) at an appeal against an Authority decision must notify the Monitoring Officer and appellant (para 8.9 – 8.11);
- Planning records should be comprehensive and accurate, and monitored by planning managers. The Director of Planning will monitor Planning Committee decisions on a continuous basis (para 9.1-10.2).

I. GENERAL ROLE AND CONDUCT OF MEMBERS AND OFFICERS

- I.1 This Local Protocol is an advisory document that sits alongside the Member Code of Conduct, the Officers' Code of Conduct, the Local Protocol for Member and Officer Relations, the Complaints, Comments and Compliments Policy and other provisions concerning probity in public office as they relate to planning. As such, it will be taken into account when a complaint under the Member Code of Conduct that relates to planning matters is being considered.
- I.2 This Protocol must be observed by Members and officers who are involved in determining planning matters. This Protocol will be of particular importance to Members of the Planning Committee. The responsibility to abide by this Protocol also applies to all other Members on those occasions when a planning matter is referred to a meeting of the full Authority.
- Why have a Local Protocol For Members and Officers Dealing with Planning Matters?
- I.3 The Authority has adopted a Code of Conduct for Members. The Code of Conduct concerns probity and other aspects of conduct across the whole range of a Member's duties. This Local Protocol seeks to relate the Code of Conduct's requirements specifically to planning. However, it goes beyond the specific concerns of the Code of Conduct to give more detailed advice on the operation of the planning system. The aim of this additional advice is to ensure the integrity of the planning system is preserved, and that it is, and is seen to be, open and fair to all parties.
- I.4 Determining a planning application is a formal process involving rules of procedure, rights of appeal, and an expectation that people will act reasonably and fairly. Those involved should always be alert to the possibility that an aggrieved party may:
- a) seek judicial review of the decision; and/or
 - b) complain to the Ombudsman on grounds of maladministration; and/or
 - c) complain to the Authority that a Member has breached the Code of Conduct.
- I.5 Decisions on planning applications involve considering development proposals against the wider public interest. Much is often at stake, particularly the financial value of landholdings and the quality of their settings, and opposing views are often strongly held by those involved. It is important, therefore, that planning decisions affecting these interests are made openly, impartially, with sound judgement and for justifiable reasons.

Role of Members

- I.6 Members set the Authority's planning policy and (except where such responsibility is delegated to officers) determine planning applications and enforcement issues within the context of that policy. It is a requirement of the Member Code of Conduct that Members must not use their position as a Member improperly to confer on or secure for themselves or any other person an advantage or disadvantage.
- I.7 When Members come to make a decision on a planning matter, they must:
- a) act fairly and openly
 - b) approach each case with an open mind
 - c) refer to the Development Plan and other material considerations in decision making
 - d) carefully weigh up relevant issues
 - e) determine each case on its own merits
 - f) ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

Role of officers

- I.8 The function of officers is to advise and assist Members in matters of planning policy and in their determination of planning applications and enforcement issues by:
- a) providing impartial and professional advice
 - b) making sure that all the information necessary for the decision to be made is given
 - c) providing a clear and accurate analysis of the issues

- d) referring to the Development Plan and other material considerations in decision making
- e) setting applications and enforcement issues against the relevant Development Plan policies and other material considerations
- f) taking into account all other material considerations
- g) giving a clear recommendation
- h) carrying out the decisions of the Authority made in Committees or Sub-Committees
- i) disclosing to the Authority their direct or indirect pecuniary interests under section 117 of the Local Government Act 1972
- j) acting in accordance with the Officer Code of Conduct and any applicable professional code of conduct.

1.9 Where officers are exercising delegated powers they will:

- a) act fairly and openly
- b) approach each case with an open mind
- c) refer to the Development Plan and other material considerations in decision making
- d) carefully weigh up relevant issues
- e) determine each case on its own merit
- f) ensure that there are clear and substantial reasons for their decisions, and that those reasons are clearly stated.

Application to policy formulation and other planning matters

1.10 While this Protocol will most commonly need to be followed in dealing with planning applications, it also applies to consideration of draft Development Plans and policies, development briefs, enforcement cases and all other planning matters. In particular, the following parts of this Protocol apply to policy formulation and planning issues other than determination of applications:

- a) the registration and disclosure of interests (section 2)
- b) dealing with lobbying, the duty to reach decisions impartially without predetermining issues, and attendance at other public meetings (section 4)
- c) pre-application and pre-decision discussions with applicants or potential applicants (section 5).

1.11 However:

- a) subject to the overriding requirement to comply with the Member Code of Conduct, and
- b) providing the discussions do not refer to individual sites

this Protocol does not preclude Members from taking part in without prejudice discussions, on the general principles of land allocation policies in the Development Plan outside the Authority's formal meetings.

1.12 Planning legislation requires all planning applications to be determined in accordance with the Development Plan, unless material considerations indicate otherwise. A material planning consideration is one which is relevant to making the planning decision in question, and will generally be concerned with ensuring that the land use is in the public interest. The weight attached to material considerations in reaching a decision is a matter of judgement for the decision-maker. Section 11A of the National Parks and Access to the Countryside Act 1949 also requires that, in exercising or performing any functions in relation to, or so as to affect, land in any national park, regard shall be had to national park purposes.

Training

1.13 Workshops are held from time to time to give guidance to Members on registration and disclosure of disclosable pecuniary interests and other issues relating to the Code of Conduct. Members of the Planning Committee will also receive specialised training on planning law and procedures, the practical operation of this Protocol and the Development

Plan. Members involved in determining planning issues will be required to complete an appropriate level of training on planning matters before being able to serve in that capacity. Members' attendance at training sessions will be monitored.

2. DECLARATION AND REGISTRATION OF INTERESTS

- 2.1 All Members, whether or not dealing with planning matters, must observe the Member Code of Conduct in:
- a) maintaining the general standards of conduct required
 - b) registering and disclosing interests; and
 - c) notifying the Chief Executive of any offer and/or receipt, of gifts or hospitality within 28 days

Registration and Disclosure of Interests

- 2.2 The general principle behind the requirement to disclose personal interests is that a Member should not use his or her position to further a private or personal interest rather than the general public interest, nor give grounds for suspicion that he or she has done so.
- 2.3 Members must, within 28 calendar days of becoming a member or co-opted member, notify the Authority's Monitoring Officer of any **disclosable pecuniary interest** as set out in Part 3 of the Member Code of Conduct, where the pecuniary interest is theirs, their spouse's or civil partner's, or is the pecuniary interest of a person with whom they are living as if they are a married couple or civil partners, and where they are aware that that other person has that interest. In addition, Members must notify the Monitoring Officer of any other **personal interest** (as defined in the Code of Conduct) they consider it appropriate to be entered on the Register of Interests. The Monitoring Officer must register any interests notified to him/her in the Authority's Register of Members' Interests maintained under the Localism Act 2011. Following re-election or re-appointment, the duty to notify the Monitoring Officer applies only as regards interests not already entered in the Authority's Register.
- 2.4 (as defined in the Code of Conduct).
Where the interest is a 'sensitive interest', the member must disclose merely *the fact that* they have a disclosable pecuniary interest in the matter concerned. Where a Member has a disclosable pecuniary interest in any matter being considered at a meeting of the Authority, committee or sub-committee, they must not participate in discussion of, or vote on, that matter, and must withdraw from the room where the meeting is being held, unless they have obtained a dispensation from the Appointments, Management and Standards Committee. However, this does not prevent the Member from making representations on the matter to the meeting, in accordance with the Authority's public speaking procedures, provided that they withdraw from the room when those representations are concluded and before any discussion or vote takes place.
- 2.5 Within 28 days of any disclosure at a meeting of an unregistered disclosable pecuniary interest, where that interest is not the subject of a pending notification, the Member must notify the Monitoring Officer of the interest.
- 2.6 Members are required to disclose a personal interest, including a "**public service interest**" (as defined in the Code of Conduct), at a meeting of the Authority, committee or sub-committee where they consider that interest to be relevant to an item of business being considered at that meeting. The disclosure shall be made at the commencement of the meeting, or when the interest becomes apparent, and shall be recorded in the minutes of the meeting.
- 2.7 Disclosure of a personal interest, including a public service interest, does not necessarily affect the Member's ability to participate in discussion or vote on the relevant item, but this will depend on the individual circumstances. If the personal interest is **financial** in nature, the Member should not participate in the business being considered, they should leave the room after exercising any right to speak which a member of the public would have (should they wish to do so). In respect of all other personal interests, including a public service

interest, the Member will need to consider whether the nature of the interest is such that it may, or may be perceived to, conflict with their public duties and, in this regard, should consider the provisions of the Member Code of Conduct and may seek advice from the Monitoring Officer. If the Member considers that they should not participate in the business being considered, they should leave the room after exercising any right to speak which a member of the public would have (should they wish to do so).

- 2.8 In any case where a Member is in any doubt about their position, advice should be sought from the Monitoring Officer.
- 2.9 Members who have substantial property interests in the National Park, or other interests that would prevent them from voting on a regular basis, should avoid serving on the Planning Committee.

Membership of another Local Authority

- 2.10 A Member who is also a member of another tier of local government will not necessarily be precluded from taking part in the decision making in relation to a planning application made by a private individual simply because his or her Parish/Town/District/County Council has submitted comments to the Authority on that application or the Member voted at the Parish/Town/District/County Council meeting. However, the Member should have regard to the guidance on pre-judging applications in section 4 of this Protocol.
- 2.11 Members of the Planning Committee who are also members of another tier of local government should adopt the practice of making it clear, when they participate in a debate on development proposals at a Parish/Town/District/County Council meeting, that the views they express are based on the information before them at that time. Members should also make it clear that their views might change in the light of further information and/or debate at the Authority's Committee meeting. This is to make it clear that the Member is keeping an open mind on the issue and cannot therefore be found to have predetermined the matter when it comes before the Authority. Further guidance on avoiding predetermination is provided at paragraphs 4.4 – 4.9 below.
- 2.12 The “multi-hatted” Member (i.e. Members serving more than one authority) will always need to disclose a public service interest (in addition to any other potential interest) in accordance with Para. 2.6 above, in relation to a planning application submitted by another authority of which they are a member, which is considered at a meeting at which the Member is present. In any case where a Member is in any doubt about their position, advice should be sought from the Monitoring Officer.

The representative role

- 2.13 A Member may choose to represent particular views of an individual or section of the community on a planning application. Where the Member advocates or clearly declares their support for or against those views, such that they no longer have an open mind on the issue, this will mean that the Member is no longer able to act impartially in the determination of that application. Where the Member is a Member of the Planning Committee, they should take no further part in the consideration of, or voting on, that particular matter. However, where a Member only reports the views of an individual or section of the community on the application for information purposes, they will normally be able to continue to participate in the consideration of the item, provided they make it clear that they are relaying those views in a reporting, and not representational, capacity.

Membership of lobbying groups

- 2.14 Where a Member is also a member of a lobbying group which has publicly expressed support for or against a planning application or another relevant planning matter, careful consideration of all the surrounding circumstances will be required in order to identify whether the Member has or might appear to have pre-judged the issue, for example the Member's role in the lobbying group and the extent to which the Member is publicly identified with that position are relevant considerations. The Member should also disclose a public service interest when the relevant item is considered at a meeting at which the

Member is present (whether as a Member of the meeting or observer), in accordance with Para. 2.6 above.

Group discussions

- 2.15 Although National Park Authorities are non-political organisations, Members need to be aware of the potential for attempting to influence the determination of an application. Members cannot accept an instruction from anyone to determine an application in a particular way, as they must determine the issue on its merits. So, while they may give appropriate weight to the views of other Members, whether expressed in the Committee meeting or in prior discussions, they must determine the application on its merits and should not take into account any factor which they are not prepared to state openly at the Committee. As a result, it is not appropriate for any group of Members to instruct Members to vote in a particular manner on an application or to apply, or threaten to apply, any sanction to any Member who voted contrary to the group's collective view. If such instructions are given Members should declare it in exactly the same manner as they would declare any other attempt at lobbying.

Gifts and Hospitality

- 2.16 The Member Code of Conduct obliges all Members to notify the Chief Executive of any offer and/or receipt of gifts or hospitality within 28 days. Where the offer of a gift or hospitality is accepted this will be recorded on the Authority's appropriate register. The Member Code of Conduct provides that Members are responsible for their decisions on the acceptance of gifts or hospitality and for ensuring that any gifts or hospitality accepted can stand up to public scrutiny and do not bring their office or the Authority into disrepute for example where a gift or hospitality might reasonably appear to compromise their personal judgement or integrity or place them under an improper obligation.
- 2.17 However, Members dealing with planning matters should be particularly alert to the possibility that they may be called upon to determine, or make representations on, a planning application submitted by someone who has offered them a gift or hospitality, even if an application has not yet been submitted. Cases where Members have accepted hospitality from planning applicants have been the subject of criticism by the Ombudsman. For this reason, any gifts and hospitality should normally be refused if there is any reason to suspect that the person offering them is an actual or potential planning applicant save that, where acceptance of a degree of hospitality by Members and/or officers is unavoidable, it should be ensured that this is at a minimum and that its receipt is notified.

3. DEVELOPMENT PROPOSALS SUBMITTED BY OR ON BEHALF OF MEMBERS AND OFFICERS, AND DEVELOPMENT BY THE AUTHORITY

Acting as agents for a planning applicant

- 3.1 Serving Members and officers, who are involved in the making of planning decisions should never act as agents for individuals (including a company, group or body) pursuing a planning matter.

Planning application by a Member or officer

- 3.2 Proposals submitted by Members and officers that are to be decided by the Authority should be reported to the Planning Committee and not dealt with by officers under delegated powers. The Monitoring Officer should be informed of all such proposals as soon as they are submitted. It is the duty of all officers to inform their line manager of any financial interests they have in a matter with which the Authority is dealing. An application for planning permission will give rise to a direct financial interest. Likewise, the onus is on Members and officers to inform the Monitoring Officer if a planning application relating to property in which they have a beneficial interest is submitted. Neither employees nor Members should assume that planning officers will otherwise be aware that the application is in respect of their land or property.
- 3.3 If Members or officers submit their own development proposal to the Authority, they should take no part in its processing. Both officers and Members will have the same rights as

any member of the public to seek to explain and justify their proposal to an officer in advance of the Committee meeting. A Member exercising this right (providing the general obligations in the Member Code of Conduct and the Local Protocol for Member and Officer Relations, in particular those relating to a Member's duty not to compromise the impartiality of officers, are not breached) should not be regarded as "seeking improperly to influence" the decision or using their position to secure an advantage.

Proposals for the Authority's own development or development on Authority land

- 3.4 Proposals for the Authority's own development (or a development involving the Authority and another party) should be treated in the same way as those by private developers. The same administrative process, including consultation, should be carried out in relation to the Authority's own planning applications, and they should be determined against the same policy background (the Development Plan and any other material planning considerations). This paragraph also applies to private applications on Authority-owned land (e.g. before a land sale is agreed or negotiated). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Authority if the development is permitted. It is important not only that the Authority treats such applications on an equal footing with all other applications, but is seen to do so.

4. LOBBYING AND REQUIREMENTS RELATING TO PUBLIC MEETINGS

Lobbying of Members by the public or planning applicants

- 4.1 Members may be subject to lobbying on planning matters and specific planning applications. When this occurs, great care is essential to maintain the Authority's, and indeed the Member's own, integrity and the public perception of the planning process.
- 4.2 Members who are likely to be involved in determining a planning matter at any meeting should, before the meeting, simply listen to points of view about the proposal. They should actively take steps to explain that, whilst they can listen to what is said, and may even adopt a preliminary view on the matter, they are keeping an open mind on the matter until it is considered at Planning Committee. If however they do form a definite view on the proposal, such that their mind is then closed on the issue, they should be guided by paragraphs 4.7 to 4.8 below. Where the applicant requires planning or procedural advice, he should be referred to officers.
- 4.3 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer, who will advise the Director of Planning.

Members' duty not to pre-judge applications/lobbying by Members

- 4.4 As a general principle, and taking account of the need to make decisions impartially, Members involved in decision making on planning should not organise support or opposition to a proposal, lobby other Members, act as an advocate, or put pressure on officers for a particular recommendation.
- 4.5 Members need to take account of the general public's expectations (and the expectations of those who might investigate any complaint), that a planning application will be processed in a fair and open manner in which Members making the decision will take account of all the evidence presented before arriving at a decision. Members should not indicate (or give the impression of) support for or opposition to a proposal in a manner which suggests they have a closed mind to any views or further information which may be available at the meeting at which the matter is discussed. In particular Members should not declare their voting intention before the meeting at which a decision is to be taken. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration.
- 4.6 Section 25(2) of the Localism Act 2011 provides that, when dealing with allegations of bias or predetermination, a decision maker is not to be taken to have had a closed mind just because they have previously done anything that directly or indirectly indicated what view they took, or would or might take, in relation to a matter that was relevant to the decision. Thus, if a Member has previously given a view on an issue, this does not in itself show that

that Member has a closed mind on that issue. The fact that a Member might have campaigned on an issue, or made public statements about their approach to it, does not prevent a Member from participating in discussion of the matter when it comes before the Authority, and to vote on a decision regarding it. So long as the Member approaches decision making with an open mind, in the sense such Member has regard to all material considerations, and remains open to the possibility that, however unlikely, he or she will hear arguments during the debate that might change their mind about how they intend to vote, such Member will not be held to have predetermined the issue.

- 4.7 Whilst Members involved in making decisions on planning matters will begin to form a view as more information and options become available, a decision can only be taken by the Planning Committee when all available information is to hand and has been duly considered. Individual Members should reach their own conclusions on an application or other planning matter rather than follow the lead of another Member. Decisions can only be taken after full consideration of the officer's report and information and discussion at the Committee.
- 4.8 If a Member does fully commit themselves to a particular view on a planning issue before it is considered at Committee or a meeting of the full Authority, such that their mind is no longer open to consideration of the merits of the case, the Member should leave the meeting room and take no part in the debate nor vote on the matter. Where a Member wants to act as a representative (rather than merely reporting the views) of his or her electoral area they should declare this fact and not vote on the matter (see paragraph 2.13).
- 4.9 Where the Monitoring Officer believes that a Member has predetermined the matter before the Committee determines it, in the sense that the Member's mind is closed to the merits of any opposing views about the issue the Monitoring Officer will discuss the position with the Member. Where the Monitoring Officer is satisfied that actual predetermination has occurred, s/he will advise the Member that it would be inappropriate for him to be present at the meeting or to vote on the application. If the Member does not follow the Monitoring Officer's advice, the Monitoring Officer will consider referring the matter to the Appointments, Management and Standards Committee.

Members' and officers' attendance at other public meetings

- 4.10 Officers, and Members who intend to take part in the decision-making process, should take care in attending meetings in connection with development proposals or submitted planning applications. Attendance should only occur when those meetings have been arranged for the purpose of disseminating information by the Authority, or by an appropriate local body, (such as a Parish Council), that is not openly advocating support for or opposition to the proposal, or unless it is known that those with different views will also be attending, so that a balance of views will be expressed. Members should take advice from the Director of Planning or Monitoring Officer before deciding whether to attend meetings that appear to have been organised for lobbying purposes.
- 4.11 When attending public meetings of any kind officers and Members should do no more than explain background or policy and, while a preliminary view on the matter may be expressed, no conclusive view should be offered on the merits or otherwise of the proposal, such as may indicate that the Member's mind on the matter is now closed. It should be explained that a decision can only be made when all relevant information is available. Those with opposing views could make allegations of bias or prejudice because a balance of views was not presented. In some circumstances Members might feel it is valuable to attend meetings to listen to particular points of view, but should always make it clear that they must also listen to opposing arguments before reaching any conclusion.

5. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS WITH APPLICANTS

Action by officers

- 5.1 In any discussions on planning issues, officers will always make it clear at the outset that any views they express are based on the officer's provisional professional judgement and do not commit the Authority to any particular decision.

- 5.2 Advice given will be consistent with and based upon the Development Plan and other material considerations. Every effort will be made to ensure that there are no significant differences in interpretation of planning policies between planning officers.
- 5.3 Officers taking part in discussions should make it clear whether they or the Committee are likely to take the decision, or if this is not yet known, the criteria used to decide whether an application is referred to the Committee.
- 5.4 Where the planning officer considers it appropriate, a written note of discussions will be made, and/or a follow up letter sent explaining the conclusions of the discussion. Two or more officers will attend potentially contentious meetings.

Attendance by Members at officers' pre-application or pre-decision discussions

- 5.5 To maintain impartiality, it is normally not good practice for Members to take part in officers' discussions with applicants. If Members are involved, they will be advised by the appropriate professional officers of the Authority. Members should not seek to advise applicants, their agents or objectors on the likely acceptability of planning proposals. The involvement of Members in such discussions will be recorded as a written file record.

6. SITE VISITS

- 6.1 When a site visit is undertaken it is for the purpose of Members to gain knowledge of the development proposal, the application site and its wider setting. It is not a formally convened meeting that is open to the public, applicants and objectors. Members and officers may not discuss the merits of the application at the site visit with each other or with other persons.
- 6.2 The Director of Planning will ensure that all correspondence in relation to site visits clearly identifies the purpose of a site visit and the format and conduct of the visit. Written procedures setting out the purpose and conduct of site visits shall be maintained by the Director of Planning and communicated to all parties. Responsibility for ensuring compliance with those procedures at the site visit rests with the Director of Planning or their representative.

Informal site visits

- 6.3 It is often helpful if Members familiarise themselves with a site before the application is debated by the Committee. However, Members should be aware that the Member Code of Conduct, and this Protocol, apply to them should they become involved in any conversation with a member of the public while visiting a site. Members are reminded that they have no legal right to enter private land without the permission of the owner or occupier.

7. OFFICER REPORTS TO COMMITTEE

- 7.1 Reports to Committee on planning matters must be accurate and cover all relevant points, including the substance of any objections and the views of those consulted. Where a planning application is subject to a full report this will refer to the provisions of the Development Plan, and all other relevant material planning considerations.
- 7.2 All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur.
- 7.3 All reports will contain a technical appraisal that clearly justifies the stated recommendation.
- 7.4 All reasons for an officer recommendation must be clear and unambiguous.
- 7.5 Members will not seek to interfere with the impartiality of the advice contained in officers' reports or to put improper pressure on officers for a particular recommendation. This would be contrary to the Member Code of Conduct.
- 7.6 If the officer's report recommends approval of a departure from the Development Plan, the material considerations justifying the departure must be clearly stated in the report.

8. THE DECISION MAKING PROCESS

Public participation

- 8.1 At meetings of the Planning Committee interested parties will be allowed to address Members in accordance with the scheme of public participation in operation at the time of the meeting.

Decisions contrary to officer recommendation

- 8.2 In discussing, and then determining, a planning application or other planning matter, Members will confine themselves to the planning merits of the case. The reasons for making a final decision should be clear and convincing, and supported by planning evidence. If Members wish to refuse an application against officer advice, or impose additional conditions on a permission, the reasons for refusal or the additional conditions must be clearly stated, and minuted, at the time the propositions are moved at the meeting.
- 8.3 If Members wish to approve an application that has been advertised as not in accordance with the development plan contrary to the officer's recommendation, the material considerations leading to the conclusion must be clearly identified, and how those considerations justify overriding the development plan clearly demonstrated. The material considerations, and the justification, will be minuted.
- 8.4 If a resolution is passed which is contrary to an officer's recommendation (whether for approval or refusal) a copy of the minute showing the Committee's reasons will be placed on the application file. Officers should also be given the opportunity to explain the full implications of a contrary decision before a vote is taken.

Conduct of meetings

- 8.5 Conscious of the public arena in which planning decisions are made, Members will conduct the business of the Planning Committee in a fair and sensitive manner. Members and officers will address one another during the debate in a professional manner.
- 8.6 Legal, planning and other officers should always attend meetings of the Planning Committee, to ensure that procedures have been properly followed and planning issues properly addressed.
- 8.7 As well as registering and disclosing interests in accordance with the Member Code of Conduct, Members will comply with the Code of Conduct's general obligations including not doing anything which may cause the Authority to breach equalities legislation; treating others with respect; and not using his or her position as a Member improperly to secure for themselves or any person an advantage or disadvantage. In accordance with the Local Protocol for Member and Officer Relations, Members must engage in and demonstrate the Authority's commitment to equality and diversity. In particular, Members should take care when addressing the meeting to avoid making statements that might reasonably be regarded as stereotyping particular sections of the community.
- 8.8 Care should be taken by Members before introducing new information into the debate at the Committee as that might lead to consideration of an application being deferred or the Committee taking a decision on the basis of information which subsequently proves to be incorrect. Where a Member receives relevant information in respect of an application which is not contained in the Committee report, whenever possible the Member should advise the Director of Planning directly so that the information can be confirmed before the Committee meeting.

Appeals against planning decisions

- 8.9 Where an appeal arises against a decision to refuse an application, officers will represent the views of the Authority at the appeal. The Committee may be requested to agree to Members giving evidence at the appeal on the reasons for the Committee's decision, particularly where the decision was not in accordance with the officer's recommendation. Officers will give support to the relevant Committee Members in preparing such evidence.
- 8.10 Where a Member wishes to support the Authority, or an appellant, on any appeal against an Authority decision on any planning matter, that Member shall as a matter of courtesy give

written notice of his or her intention to the Monitoring Officer and the appellant. Where the appeal is to be dealt with at an inquiry, the notice shall be delivered to the Monitoring Officer and the appellant normally not less than five working days before the start of the inquiry.

- 8.11 In deciding whether to make representations on an appeal Members should consider very carefully beforehand whether there could be any allegation that they are in breach of this Protocol or any other provisions in the Member Code of Conduct.

9. REVIEW OF DECISIONS

- 9.1 The Director of Planning and Chairman of the Planning Committee will monitor Planning Committee decisions on a continuous basis. If concerns arise relating to decisions made contrary to the officer's recommendation, they will report these concerns to the Authority.

10. COMPLAINTS AND RECORD KEEPING

- 10.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations. The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by planning managers.

11. REVIEW

- 11.1 This protocol will be kept under review and updated from time to time in the light of changes in law and practice, and having regard to experience and lessons learned from individual situations.

Adopted by the South Downs National Park Authority

Date: 29th March 2011

Reviewed:

Updated: |