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Cherwell District Council

Planning Committee

Minutes of a meeting of the Planning Committee held at Bodicote House, Bodicote, Banbury, OX15 4AA, on 19 February 2015 at 4.00 pm

Present: Councillor Rose Stratford (Chairman)
Councillor Colin Clarke (Vice-Chairman)

Councillor Andrew Beere
Councillor Fred Blackwell
Councillor Michael Gibbard
Councillor Chris Heath
Councillor David Hughes
Councillor Russell Hurle
Councillor Matt Johnstone
Councillor James Macnamara
Councillor Alastair Milne Home
Councillor Nigel Randall
Councillor G A Reynolds
Councillor Barry Richards
Councillor Trevor Stevens
Councillor Lawrie Stratford
Councillor Douglas Williamson

Substitute Members: Councillor Barry Wood (In place of Councillor Mike Kerford-Byrnes)

Also Present: Councillor Ken Atack, Local Ward Member for agenda items 19 and 20

Apologies for absence: Councillor Mike Kerford-Byrnes

Officers: Jonathan Westerman, Development Services Manager
Bob Duxbury, Development Control Team Leader
Tracey Morrissey, Principal Planning Officer
Paul Ihringer, Principal Planning Officer
Rebekah Morgan, Planning Officer
Ross Chambers, Solicitor
Natasha Clark, Team Leader, Democratic and Elections
Aaron Hetherington, Democratic and Elections Officer

Declarations of Interest

Members declared interests in the following agenda items:

8. OS Parcels 4083 and 6882 Adjoining and north of Broken Furrow, Warwick Road, Banbury.

Councillor Alastair Milne Home, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Andrew Beere, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Barry Richards, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Colin Clarke, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

9. Hardwick Hill, Southam Road, Banbury.

Councillor Alastair Milne Home, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Andrew Beere, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Barry Richards, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Colin Clarke, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

10. Land to Rear of Tangmere Close and Scampton Close, Skimmingdish Lane, Bicester.

Councillor Rose Stratford, Non Statutory Interest, as a member of Bicester Town Council which had been consulted on the application.

14. OS Parcel 8184 Adjoining and North of River Cherwell And South West of Spital Farm Sewage Bankside Banbury.

Councillor Alastair Milne Home, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Andrew Beere, Disclosable Pecuniary Interest, as an employee of Chiltern Railways and would withdraw from the Council Chamber and take no part in the discussions or voting on this item and Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Barry Richards, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Colin Clarke, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

16. Swalcliffe Park Equestrian, Grange Lane, Swalcliffe.

Councillor G A Reynolds, Declaration, as the applicants Father was known to him and would leave the room for the duration of the item.

18. 60 High Street, Banbury.

Councillor Alastair Milne Home, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Andrew Beere, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Barry Richards, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

Councillor Colin Clarke, Non Statutory Interest, as a member of Banbury Town Council which had been consulted on the application.

21. Bridge north east of The Duck on the Pond over the River Swere South Newington.

Councillor G A Reynolds, Non Statutory Interest, as a County Councillor whose division the site fell in, but would remain in room for the debate but would not take part in the vote.

170 **Requests to Address the Meeting**

The Chairman advised that requests to address the meeting would be dealt with at each item.

171 **Urgent Business**

There were no items of urgent business.

172 **Minutes**

The Minutes of the meeting held on 22 January 2015 were agreed as a correct record and signed by the Chairman.

173 **Chairman's Announcements**

The Chairman made the following announcement:

1. Under the Openness of Local Government Bodies Regulations 2014, members of the public were permitted to film, broadcast and report on the meeting, subject to the efficient running of the meeting not being affected.

174 **Campsfield House: Immigration Removal Centre, Langford Lane, Kidlington**

The Committee considered application 14/01778/F for the expansion of existing immigration removal centre to provide additional detainee accommodation, ancillary detainee and staff facilities, car parking, landscaping and internal fencing.

The Development Control Team Leader advised the Committee that a letter from a law firm acting on behalf of members of Stop Campsfield Expansion had been received on 17 February 2015. Having taken legal advice, Officers had concluded that it was prudent to get counsel opinion to help clarify the points raised before this application is determined and therefore the officer recommendation had changed from approval to deferral.

Councillor Rose Stratford proposed that application 14/01778/F be deferred to seek counsel opinion on matters raised by a law firm acting on behalf of members of Stop Campsfield Expansion. Councillor Clarke seconded the proposal.

Resolved

That consideration of application 14/01778/F be deferred to seek counsel opinion on matters raised by a law firm acting on behalf of members of Stop Campsfield Expansion

175 **OS Parcels 4083 and 6882 Adjoining and north of Broken Furrow, Warwick Road, Banbury**

The Committee considered application 14/00341/DISC for the discharge of condition no. 5 of 12/01789/OUT – provision of Design Code.

In reaching their decision, the committee considered the officers' report, presentation and written update.

Resolved

That the discharge of condition no. 5 of planning application 12/01789/OUT be approved.

176 **Hardwick Hill, Southam Road, Banbury**

The Committee considered application 14/00383/DISC for the discharge of condition no. 6 of 13/00159/OUT – provision of Design Code.

Jason Leonard, agent for the applicant, addressed the Committee in support to the application.

In reaching their decision, the Committee considered the officers' report, written update, presentation and the address of the public speaker.

Resolved

That the discharge of condition no. 6 of 13/00159/OUT be approved.

177 **Land to Rear of Tangmere Close and Scampton Close, Skimmingdish Lane, Bicester**

The Committee considered application 14/00697/F for the residential development for 46 dwellings.

The Development Control Team Leader advised the Committee that various correspondence had been received since the publication of the agenda and officers considered that there was a need to give further consideration to the points of access to these potential development sites and consequently the officer recommendation had changed from approval to deferral.

Councillor Rose Stratford proposed that application 14/00697/F be deferred. Councillor Lawrie Stratford seconded the proposal.

Resolved

That consideration of application 14/00697/F be deferred to seek the comments of Oxfordshire County Council as the Highways Authority; Allow the submitted TA to be updated to reflect the potential impact of Bicester 11; and, enable a roundtable discussion to take place between Taylor Wimpey/Albion Land/ CDC and agree the proposed access arrangements.

178 **Otmoor Lodge, Horton Hill, Horton cum Studley**

The Committee considered application 14/01153/F for the change of use from C1 into 4no. dwellings (C3).

The Principal Planning Officer advised the Committee that after agenda publication a further letter has been received from solicitors acting for the applicants which raised issues that required further investigation and the officers' recommendation has therefore changed from approval to deferral.

Councillor Rose Stratford proposed that application 14/01153/F be deferred to allow further investigation into legal issues raised by solicitors acting for the applicant. Councillor Lawrie Stratford seconded the proposal.

Resolved

That consideration of application 14/01153/F be deferred to allow further investigation into legal issues raised by solicitors acting for the applicant.

179 **Otmoor Lodge, Horton Hill, Horton cum Studley**

The Chairman advised the Committee that the application had been withdrawn by the applicant.

Land south of Greenacre adj to South Side Steeple Aston

The Committee considered application 14/01434/F for a dwelling with garage and access.

Martin Lipson, Steeple Aston Parish Councillor, addressed the committee speaking in objection to the application.

Bob Sutton, agent, addressed the committee in support to the application.

Councillor Macnamara proposed that application be refused. Councillor Wood Seconded the proposal. The motion was voted on and subsequently fell.

Councillor Randall proposed that the application be approved, Councillor Clarke seconded the proposal.

In reaching their decision, the committee considered the officers report and presentation, written update and the address of the public speakers.

Resolved

That application 14/01434/F be approved, subject to the following conditions:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms site plan and drawing numbered 14:3603:3a
3. Prior to the commencement of the development hereby approved, a stone sample panel (minimum 1m² in size) shall be constructed on site in natural limestone, which shall be inspected and approved in writing by the Local Planning Authority. Thereafter, the external walls of the development shall be laid, dressed, coursed and pointed in strict accordance with the approved stone sample panel.
4. The roof of the development hereby approved shall be covered with natural blue/black slates.
5. Prior to the commencement of the development, full details of the doors and windows hereby approved, at a scale of 1:20 including a cross section, cill, lintel and recess detail and colour/finish, shall be submitted to an approved in writing by the Local Planning Authority. Thereafter the doors and windows shall be installed within the building in accordance with the approved details.
6. Prior to the commencement of the development hereby approved, a plan showing full details of the finished floor levels in relation to existing

and proposed site levels for the proposed dwelling shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved finished floor levels plan.

7. Except to allow for the means of vehicular access and vision splays, the existing natural stone wall along the northern and eastern boundaries of the site shall be retained and maintained at the existing height of not less than 1 metre.
8. Prior to the construction of the dwelling hereby approved, the proposed means of access between the land and the highway shall be formed, laid out and constructed strictly in accordance with Oxfordshire County Council's specification and guidance.
9. Prior to the commencement of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the parking and manoeuvring areas shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the parking and manoeuvring areas shall be provided on the site in accordance with the approved details and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.
10. The vision splays shall not be obstructed by any object, structure, planting or other material of a height exceeding 0.6m measured from the carriageway level.
11. Notwithstanding the provisions of Classes A to E (inc.) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 1995 and its subsequent amendments, the approved dwelling(s) shall not be extended, nor shall any structures be erected within the curtilage of the said dwelling(s), without the prior express planning consent of the Local Planning Authority.
12. Notwithstanding the provisions of Classes A, B and C of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 1995 and its subsequent amendments, no new window(s) or other openings, other than those shown on the approved plans, shall be inserted in the walls or roof of the dwelling without the prior express planning consent of the Local Planning Authority.

OS Parcel 8184 Adjoining and North of River Cherwell And South West of Spital Farm Sewage Bankside Banbury

The Committee considered application 14/01621/F for the construction of a Light Maintenance Depot for train vehicles with associated accommodation and associated rail sidings for train stabling.

Graham Cross, the applicant, addressed the committee in support to the application.

In reaching their decision, the committee considered the officers' report, presentation, written update and presentation of the public speaker.

Resolved

That application 14/01621/F be approved:

- i. That it be resolved that in accordance with the provisions of Regulation 24 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 that this report is approved as setting out the main reasons, considerations and measures of mitigation proposed with regards to the Environmental Statement.
- ii. Subject to the following conditions:
 1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
 2. Except where otherwise stipulated by conditions attached to this permission, the development shall be carried out strictly in accordance with the following plans and documents and the materials and finishing details included therein: Application forms, Design and Access Statement, Drawing No. MCN/BAN/P100 Rev A, MCN/BAN/P101 Rev A, MCN/BAN/P103 Rev A, MCN/BAN/P104 Rev A, MCN/BAN/105 Rev E, MCN/BAN/P106 Rev A, MCN/BAN/P107 Rev A, MCN/BAN/P108 Rev A, MCN/BAN/P109 Rev A, DPC-BAN-P110-A, and DPC-BAN-P111
 3. Prior to the commencement of the development hereby approved, a schedule of materials and finishes for the external walls and roof(s) of the development hereby approved shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved schedule
 4. Prior to the commencement of the development hereby approved, full details of the external lighting shall be submitted to and approved in writing by the Local planning Authority. Thereafter, the lighting shall be carried out and retained in accordance with the approved details.
 5. Prior to the commencement of the development hereby approved, full details of the refuse bin storage for the site, including location and compound enclosure details, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of the dwellings, the refuse bin storage area shall be provided in accordance with the approved details and retained unobstructed except for the storage of refuse bins.
 6. Prior to the commencement of the development hereby approved, full details of the fire hydrants to be provided or enhanced on the site shall

be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of the development, the fire hydrants shall be provided or enhanced in accordance with the approved details and retained as such thereafter.

7. All services serving the proposed development shall be provided underground unless details of any necessary above ground service infrastructure, whether or not permitted by the Town and Country Planning (General Permitted Development Order) 1995 (as amended), have first been submitted to and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development that they serve, the above ground services shall be provided on site in accordance with the approved details
8. Prior to the commencement of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
 - (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
 - (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps
9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.
10. Prior to the commencement of the development hereby approved, an Arboricultural Method Statement (AMS), undertaken in accordance with BS: 5837:2012 and all subsequent amendments and revisions [specify appropriate section if required] shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, all works on site shall be carried out in accordance with the approved AMS.

11. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.
12. Prior to the first occupation of the development hereby approved, a Travel Plan prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved Travel Plan shall be implemented and operated in accordance with the approved details.
13. Prior to the commencement of the development hereby approved, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to, and approved in writing by, the Local Planning Authority. Thereafter, and prior to the commencement of any building works on the site the approved surface water drainage scheme shall be carried out and prior to the first occupation of any building to which the scheme relates the approved foul sewage drainage scheme shall be implemented. All drainage works shall be laid out and constructed in accordance with the Water Authorities Association's current edition "Sewers for Adoption".
14. Prior to the commencement of the development hereby approved, full details of a drainage strategy for the entire site, detailing all on and off site drainage works required in relation to the development, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the drainage works shall be carried out and completed in accordance with the approved strategy, until which time no discharge of foul or surface water from the site shall be accepted into the public system.
15. Prior to, and within two months of, the commencement of the development, the site shall be thoroughly checked by a suitably qualified ecologist to ensure that no protected species, which could be harmed by the development, have moved on to the site since the previous surveys were carried out. Should any protected species be found during this check, full details of mitigation measures to prevent their harm shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved mitigation scheme.
16. Prior to the commencement of the development hereby approved, including any demolition, any works of site clearance and prior to the introduction of any construction machinery onto the site, protective fencing and warning notices shall be erected on the site in accordance with the approved construction method statement. All protective fencing and warning signs shall be maintained in accordance with approved details for the entirety of the construction phase.

17. Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP.
18. Prior to each phase of development approved by this planning permission no development (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), shall take place until a scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:
 1. A site investigation scheme, based on the submitted desk study (Phase1 Geo-Environmental and Geotechnical Assessment at the proposed Banbury depot, Ground investigation and Pilling Limited, 16th September 2013, ML/21362) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
 2. The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved.
19. No occupation of each phase of development shall take place until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan (a "long-term monitoring and maintenance plan") for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
20. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out

until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

21. The development hereby permitted shall not be commenced until such time as a scheme to dispose of surface water has been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented as approved.
22. No development shall take place until a scheme for the provision and management of an 10 metre wide buffer zone alongside the River Cherwell shall be submitted to and agreed in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the local planning authority. The buffer zone scheme shall be free from built development including lighting, domestic gardens and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
 - plans showing the extent and layout of the buffer zone
 - details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsible for management plus production of detailed management plan
23. No soakaways shall be constructed in contaminated ground.
24. No sound-amplifying equipment shall be installed or operated on the premises without the prior consent of the Local Planning Authority.
25. No external lights/floodlights shall be erected on the land without the prior express consent of the Local Planning Authority
26. All buildings hereby approved shall be constructed to at least a BREEAM 'Very Good' standard.

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The Paddocks, Chesterton

The Committee considered application 14/01737/OUT for an outline application with means of access for consideration (layout, scale, appearance and landscaping reserved for subsequent approval). For the erection of up to 45 dwellings served via a new vehicular and pedestrian access; public open space and associated earthworks to facilitate surface water drainage; and other ancillary and enabling works.

Philip Clarke, Chairman of Chesterton Parish Council addressed the committee in objection to the application.

Kathryn Ventham, agent to the applicant, addressed the committee in support to the application.

In reaching their decision, the Committee considered the officers' report, written update and presentation and the addresses of the public speakers.

Resolved

That application 14/01737/OUT be approved, subject to:

- a) The applicants entering into an appropriate legal agreement to the satisfaction of the District Council to secure financial contributions as outlined below:

CDC Contributions

- 35% affordable housing
- Refuse and Recycling - £67.50 per property
- Play Areas – a LAP and £31,995.52 commuted maintenance sum
- Attenuation Pond Maintenance - £14.91 per m²
- Ditch Maintenance - £50.09/Ln m
- POS Maintenance - £25.07 per m²
- Mature Tree Maintenance – £2527.16 per mature tree
- Monitoring fee - £1500

OCC Contributions

- £179,868 – Primary School Expansion in the area
- £254,216 – New Secondary School at Bicester
- £8,939 – Special Education Needs
- £5,452 – Bicester New Library
- £7,921 – Waste Management
- £619 – Museum Resource Centre
- £7,416 – Adult Health and Wellbeing Day Care
- £2,123 – Central Library
- £3,750 – Administration
- Improvements to pedestrian and cycle connectivity into Chesterton from the application site including possibility of footway connection via Green Lane and other routes

Thames Valley Police - £6,285.65

- b) the following conditions:

1. No development shall commence until full details of the layout, scale, appearance, access and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority
2. In the case of the reserved matters, application for approval shall be made not later than the expiration of three years beginning with the date of this permission
3. The development to which this permission relates shall be begun not later than the expiration of two years from the final approval of the

reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.

4. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms,
5. Prior to the commencement of the development, a plan showing the details of the finished floor levels of the proposed dwellings in relation to existing ground levels on the site shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
6. No more than 45 dwellings shall be accommodated on the site.
7. Prior to the commencement of the development hereby permitted, a detailed scheme for the surface water and foul sewage drainage of the development shall be submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be carried out prior to commencement of any building works on the site and the approved foul sewage drainage scheme shall be implemented prior to the first occupation of any building to which this scheme relates. All drainage works shall be laid out and constructed in accordance with the Water Authorities Associations current edition 'sewers for adoption'
8. Prior to the commencement of the development hereby approved, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme for landscaping the site shall include:-
 - (a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas,
 - (b) details of the existing trees and hedgerows to be retained as well as those to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation,
 - (c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.
9. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced

in the current/next planting season with others of similar size and species.

10. Prior to the commencement of the development hereby approved, a schedule of landscape maintenance for a minimum period of 5 years, to include the timing of the implementation of the schedule and procedures for the replacement of failed planting shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the landscape maintenance shall be carried out in accordance with the approved schedule.
11. Except to allow for the means of access and vision splays the existing hedgerow along the north-west boundary of the site shall be retained and properly maintained at a height of not less than 3 metres, and if any hedgerow plant dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.
12. The existing hedgerows along the south-west and south-east boundaries of the site shall be retained and properly maintained at a height of not less than 3 metres, and if any hedgerow plant dies within five years from the completion of the development it shall be replaced and shall thereafter be properly maintained in accordance with this condition.
13. Prior to the commencement of the development hereby approved full details of the provision, landscaping and treatment of open space/play space within the site together with a timeframe for its provision shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the open space/play space shall be landscaped, laid out and completed in accordance with the approved details and retained at all times as open space/play space.
14. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a mitigation strategy for great crested newts, which shall include timing of works, exclusion fencing, the location and design of alternative ponds/habitats together with the timing of their provision, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the mitigation works shall be carried out in accordance with the approved details.
15. Where an offence under Regulation 41 of the Habitat and Species Regulations 2010 is likely to occur in respect of the development hereby approved, no works of site clearance, demolition or construction shall take place which are likely to impact on newts until a licence to affect such species has been granted in accordance with the aforementioned Regulations and a copy thereof has been submitted to the Local Planning Authority.
16. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance or the translocation of any reptile, a strategy for the translocation of reptiles,

which shall include the identification of receptor sites, the management scheme, landscaping and the arrangements for implementation shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the strategy shall be carried out in accordance with the approved details.

17. Prior to the commencement of the development hereby approved a full lighting strategy designed in line with Bat Conservation Trust Guidelines is to be submitted and approved in writing by the Local Planning Authority. Thereafter the strategy shall be carried out in accordance with the approved details.
18. No removal of trees recorded as Category 2 shall be carried out except in adherence to the precautionary working methodology outlined in Section 2.40 of the Protected species report submitted with the application which was prepared by CSa Environmental Planning dated September 2014.
19. No removal of hedgerows, trees or shrubs nor works to, or demolition of buildings or structures that may be used by breeding birds, shall take place between 1 March and 31 August inclusive, unless the Local Planning Authority has confirmed in writing that such works can proceed, based on health and safety reasons in the case of a dangerous tree, or the submission of a recent survey (no older than one month) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site.
20. Prior to the commencement of the development hereby approved, full details of the means of access between the land and the highway, including, position, layout, construction, drainage and vision splays shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the means of access shall be constructed and retained in accordance with the approved details.
21. Prior to the first occupation of any of the dwellings hereby approved, all of the estate roads and footpaths servicing that dwelling (except for the final surfacing thereof) shall be laid out, constructed, lit and drained in accordance with Oxfordshire County Council's 'Conditions and Specifications for the Construction of Roads' and its subsequent amendments.
22. Prior to the commencement of the development hereby approved, full specification details of the vehicular accesses, driveways and turning areas to serve the dwellings, which shall include construction, layout, surfacing and drainage, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of any of the dwellings, the access, driveways and turning areas shall be constructed in accordance with the approved details.
23. Prior to the commencement of the development hereby approved, full specification details (including construction, layout, surfacing and drainage) of the parking and manoeuvring areas shall be submitted to

and approved in writing by the Local Planning Authority. Thereafter, and prior to the first occupation of the development, the parking and manoeuvring areas shall be provided on the site in accordance with the approved details and shall be retained unobstructed except for the parking and manoeuvring of vehicles at all times thereafter.

24. A Travel Information Pack shall be developed in accordance with Oxfordshire County Council guidelines and submitted to the OCC Travel Plans team for approval, prior to first occupation of the site.
25. Prior to any demolition on the site, the commencement of the development and any archaeological investigation, a professional archaeological organisation acceptable to the Local Planning Authority shall prepare a first stage archaeological Written Scheme of Investigation, relating to the application area, which shall be submitted to and approved in writing by the Local Planning Authority.
26. Prior to any demolition on the site and the commencement of the development and following the approval of the first stage Written Scheme of Investigation referred to in condition [a], a programme of archaeological evaluation, investigation and recording of the application area shall be carried out by the commissioned archaeological organisation in accordance with the approved first stage Written Scheme of Investigation.
27. That prior to the first occupation of any part of the development hereby permitted, fire hydrants shall be provided on site in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority.
28. Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
29. Development should not be commenced until: Impact studies of the existing water supply infrastructure have been submitted to, and approved in writing by, the local planning authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point.

Swalcliffe Park Equestrian, Grange Lane, Swalcliffe

The Committee considered application 14/01762/F for the use of land at Grange Farm for mixed use comprising part agricultural, part equestrian training and competitions (Use Class D2), formation of new access, extension to existing car park and associated work.

Councillor Heath proposed that consideration of the application be deferred to allow for a site visit. Councillor Clarke seconded the proposal. The motion was duly voted on and subsequently fell.

Tim Willis, legal advisor to a group of objectors, addressed the Committee in objection to the application.

Sarah Taylor, the applicant, addressed the Committee in support of the application.

On the advice of the Solicitor, the Chairman proposed that the meeting be adjourned for 20 minutes to allow officers to consider the legal points raised by the objector during his address. Councillor Clarke seconded the proposal.

19.00: Adjournment of meeting

19.20: Reconvening of meeting

The Solicitor advised the Committee that the officer recommendation had changed from approval to deferral to allow officers time to seek legal advice on the comments raised by the legal advisor for objectors.

It was proposed by Councillor Rose Stratford that consideration of application 14/01762/F be deferred to allow officers to seek legal advice on the matters raised by the legal adviser for objectors. Councillor Clarke seconded the proposal.

Resolved

That consideration of application 14/01762/F be deferred to seek legal advice on matters raised by the legal advisor for objectors.

184

Land to the West of Garners House, Main Street, Great Bourton

The Committee considered application 14/01843/OUT for an outline application for development of 33 dwellings and a community hall, public open space and associated infrastructure, car parking and landscaping.

Councillor Ken Atack, addressed the committee as Ward Member.

Emma Walker, agent for the applicant, addressed the committee in support of the application.

Sally Leszczynski, Chairman of Bourtons Parish Council, addressed the committee in support of the application.

In reaching their decision, the committee considered the officers' report, written update, presentation and the address of the speakers.

Resolved

That application 14/01843/OUT be approved subject to:

- a) The applicants entering into an appropriate legal agreement to the satisfaction of the District Council, with delegation to the Head of Development Management to secure financial contributions as outlined below:

The Heads of terms relating to the additional development would likely include the following (once all sums are confirmed it will be necessary to consider whether they are CIL compliant):-

CDC Contributions

- Affordable housing - 35%
- Refuse and Recycling - £67.50 per dwelling
- Play areas – a LAP and £31,995.52 commuted maintenance sum
- Hedgerow maintenance - £35.78 per m2
- Balancing pond - £14.91 per m2
- Informal open space 23m2 per person (minimum provision of 1814m² is required) and commuted sum of £25.07 per m2
- Mature tree maintenance – to be confirmed
- Monitoring fee £1,975
- Community hall (discussed below)

OCC Contributions

- £33,000 towards sustaining and improving bus services to and from Great Bourton
- £8,000 towards bus stop infrastructure (shelter on the eastern side of the A423 towards Banbury and for two pole/ flag/ information case units)
- £153,230 – Primary school expansion
- £212,838 – Secondary school expansion
- £7,857 - Special education needs
- £8,838 – Banbury New Library
- £6,655 - waste infrastructure
- £520 – Museum Resource centre
- £1,783 – Central Library
- £3,750 – Administration
- S278 agreement to cover works within the highway

The relocation of the village gateway features and the 30mph speed limit will require alteration to the existing Traffic Regulation Order and may incur a cost

- b) the following conditions with any final revisions/wording to be delegated to the Head of Development Management:
1. No development shall commence until full details of the layout, scale, appearance, access and landscaping (hereafter referred to as reserved matters) have been submitted to and approved in writing by the Local Planning Authority.

2. In the case of the reserved matters, application for approval shall be made not later than the expiration of one year beginning with the date of this permission.
3. The development to which this permission relates shall be begun not later than the expiration of one year from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last reserved matters to be approved.
4. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: application forms, Design and Access Statement (dated January 2015), other technical reports and surveys submitted with the application and site location plan (drawing number P002).
5. No more than 33 dwellings shall be accommodated on the site.
6. That no development shall take place until a full Arboricultural Survey, Method Statement and Arboricultural Impact Assessment, tree protection plan and report on all existing trees and hedgerows within and around the perimeters of the site have been submitted to and approved in writing by the local planning authority. The survey and report shall include details of all trees and hedgerows to be removed and those to be retained; and the methods to protect the retained trees during the course of the development. The development shall be carried out in accordance with the approved details.
7. Except to allow for the means of access and vision splays the existing hedgerow/trees along the north, west and south boundaries of the site shall be retained and properly maintained and any hedgerow/tree which may die within five years from the completion of the development shall be replaced and shall thereafter be properly maintained in accordance with this condition.
8. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in accordance with BS 4428:1989 Code of Practice for general landscape operations (excluding hard surfaces), or the most up to date and current British Standard, in the first planting and seeding seasons following the occupation of the building(s) or on the completion of the development, whichever is the sooner. Any trees, herbaceous planting and shrubs which, within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the current/next planting season with others of similar size and species.
9. Prior to the commencement of the development, full design details of the equipment and layout of the Local Area of Play (LAP) shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the LAP shall be implemented in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

10. Prior to the commencement of the development hereby approved, including any works of site clearance, a Landscape and Ecology Management Plan (LEMP) and method statement for protected species and biodiversity enhancements, together with long-term maintenance, has been submitted to and approved in writing by the local planning authority. The LEMP and method statement shall be carried out and retained in accordance with the approved details.
11. No removal of hedgerows, trees or shrubs shall take place between the 1st March and 31st August inclusive, unless the Local Planning Authority has confirmed in writing that such works can proceed, based on health and safety reasons in the case of a dangerous tree, or the submission of a recent survey (no older than one month) that has been undertaken by a competent ecologist to assess the nesting bird activity on site, together with details of measures to protect the nesting bird interest on the site.
12. Prior to the commencement of the development hereby approved, including any demolition and any works of site clearance, a report regarding badgers, which shall include details of a recent survey (no older than six months), any mitigation, whether a development licence is required and the location and timing of the provision of any protective fencing around setts/commuting routes, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details.
13. Prior to the commencement of the development hereby approved, including any demolition, and any works of site clearance, a method statement for enhancing biodiversity on site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the biodiversity enhancement measures shall be carried out and retained in accordance with the approved details.
14. All species used in the planting proposals associated with the development shall be native species of UK provenance.
15. No development shall commence on site until a Construction Traffic Management Plan providing full details of the phasing of the development has been submitted to and approved in writing by the Local Planning Authority (in consultation with the Local Highway Authority) prior to the commencement of development. This plan is to include wheel washing facilities, a restriction on construction & delivery traffic during the peak traffic periods and an agreed route to the development site. The approved Plan shall be implemented in full during the entire construction phase and shall reflect the measures included in the Construction Method Statement received.
16. Prior to the first occupation of the development hereby approved, a Travel Plan prepared in accordance with the Department of Transport's Best Practice Guidance Note "Using the Planning Process to Secure Travel Plans" and its subsequent amendments, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter,

the approved Travel Plan shall be implemented and operated in accordance with the approved details.

17. Prior to the commencement of any part of the development hereby approved the public right of way shall be protected and fenced in accordance with details to be firstly submitted to and approved in writing by the Local Planning Authority. Thereafter, the public right of way shall remain fenced and available for use throughout the construction phase. No materials, plant, temporary structures or excavations of any kind should be deposited / undertaken on or adjacent to the Public Right of Way that may obstruct or dissuade the public from using the public right of way whilst development takes place.
18. No changes to the public right of way direction, width, surface, signing or structures shall be made without prior permission approved by the Countryside Access Team or necessary legal process.
19. Prior to the commencement of the development, full details of the proposed kissing gates shall be submitted to and approved in writing by the Local Planning Authority. The kissing gates shall be installed prior to the occupation of the development.
20. Prior to the commencement of the development hereby permitted a desk study and site walk over to identify all potential contaminative uses on site, and to inform the conceptual site model shall be carried out by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and shall be submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval that it is satisfied that no potential risk from contamination has been identified.
21. If a potential risk from contamination is identified as a result of the work carried out under condition 20, prior to the commencement of the development hereby permitted, a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals shall be documented as a report undertaken by a competent person and in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place unless the Local Planning Authority has given its written approval that it is satisfied that the risk from contamination has been adequately characterised as required by this condition.
22. If contamination is found by undertaking the work carried out under condition 21, prior to the commencement of the development hereby permitted, a scheme of remediation and/or monitoring to ensure the site is suitable for its proposed use shall be prepared by a competent person and in accordance with DEFRA and the Environment Agency's

'Model Procedures for the Management of Land Contamination, CLR 11' and submitted to and approved in writing by the Local Planning Authority. No development shall take place until the Local Planning Authority has given its written approval of the scheme of remediation and/or monitoring required by this condition.

23. If remedial works have been identified in condition 22, the development shall not be occupied until the remedial works have been carried out in accordance with the scheme approved under condition 22. A verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.
24. If, during development, contamination not previously identified is found to be present at the site, no further development shall be carried out until full details of a remediation strategy detailing how the unsuspected contamination shall be dealt with has been submitted to and approved in writing by the Local Planning Authority. Thereafter the remediation strategy shall be carried out in accordance with the approved details.
25. Prior to the commencement of the development, a Construction Environment Management Plan (CEMP), which shall include details of the measures to be taken to ensure construction works do not adversely affect residential properties on, adjacent to or surrounding the site together with details of the consultation and communication to be carried out with local residents shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with approved CEMP.
26. Prior to the submission of a reserved matter application, a drainage strategy detailing any on and/or off site drainage works to accord with Sustainable Urban Drainage principles, has been submitted to and approved by, the local planning authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.
27. Prior to the commencement of the development hereby approved, full details of the fire hydrants to be provided or enhanced on the site shall be submitted to and approved in writing by the Local Planning Authority. Thereafter and prior to the first occupation of the development, the fire hydrants shall be provided or enhanced in accordance with the approved details and retained as such thereafter.

60 High Street, Banbury

The Committee considered application 14/01876/F for the change of use from A1 (vacant) to A2 (letting agent).

In reaching their decision, the committee considered the officers report and presentation.

Resolved

That application 14/01876/F be approved, subject to the following conditions:

1. The works to which this consent relates shall be begun not later than the expiration of three years beginning with the date of this consent.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, site location plan and drawing number MC-BAN-CHOU.
3. The ground floor of the building shall be used only for the purpose of a letting agent/estate agent and for no other purpose whatsoever, including any other purpose in Class A2 of the Schedule to the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005.

186

The Barnhouse, Mollington Road, Claydon

The Committee considered application 14/01633/F for the extension to existing dwelling together with retention of portacabin for the duration of the building works.

In introducing the report, the Planning Officer apologised that a decision notice had erroneously been sent to interested parties and confirmed that the decision had not yet been taken on the application as it was for Members to determine.

Councillor Ken Atack addressed the Committee as Ward Member.

David Hill, a local resident, addressed the Committee in objection to the application.

Carl Middleditch, agent for the applicant, addressed the Committee in support of the application.

In reaching their decision, the committee considered the officers' report, presentation and the addresses of the speakers.

Resolved

That application 14/01633/F be approved, subject to the following conditions:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, site location plan and drawing number 2286/05 rev A.

3. Prior to the commencement of the development hereby approved, samples of the colour/finish of the windows and doors shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the samples so approved.
4. Notwithstanding the development hereby approved, the remaining walls and roof of the barn shall not be removed without the prior express consent of the Local Planning Authority.
5. The portakabin hereby approved shall only remain on site for the duration of the building works relating to the application and shall only be occupied by the current occupants of 'The Barnhouse' for the duration of the works. Within two months of the occupation of the development hereby approved, the portakabin shall be removed from the site in its entirety.

187 **The Barnhouse, Mollington Road, Claydon**

The Committee considered application 14/02090/F for the insertion of windows into existing dwelling.

In reaching their decision, the committee considered the officers' report and presentation.

Resolved

That application 14/02090/F be approved, subject to the following conditions:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, site location plan and drawing number 2286/06 rev A.
3. Prior to the commencement of the development hereby approved, samples of the colour/finish of the windows shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the samples so approved.

188 **Bridge north east of The Duck on the Pond over the River Swere South Newington**

The Committee considered application 14/02091/LB to strengthen the bridges central arch barrel, by using the Goldhawk Helifix System, i.e. the introduction of stainless steel reinforcement, cut into chases in the intrados stonework of

the arch barrel and set in resin and to replace the kerbs, re-surface the west verge, pave the east verge and re-surface the carriageway over the bridge.

John Braithwaite, Chairman of South Newington Parish Council addressed the committee in support of the application.

In reaching their decision, the committee considered the officers' report, presentation, written update and the address of the public speaker.

Resolved

That application 14/02091/LB be approved, subject to the following conditions:

1. The works to which this consent relates shall be begun not later than the expiration of three years beginning with the date of this consent.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, Design and Access Statement, Location Plan and drawings numbered: B0107/1100 and B0107/2402
3. The resin to be used to secure the Helifix Helibars shall be coloured to match the existing stonework of the bridge.
4. Any remedial stonework necessary for the repair or making good shall be carried out in natural stone of the same type, texture, colour and appearance as the stone on the existing structure and shall be laid, dressed, coursed and pointed to match that of the existing stonework.

189

2 Friars Hill Flats Friars Hill Wroxton

The Committee considered application 14/02095/F for the subdivision of Flat 2 into two separate flats.

In reaching their decision, the committee considered the officers' report and presentation.

Resolved

That application 14/02095/F be approved, subject to the following conditions:

1. The development to which this permission relates shall be begun not later than the expiration of three years beginning with the date of this permission.
2. Except where otherwise stipulated by condition, the application shall be carried out strictly in accordance with the following plans and documents: Application forms, site location plan and proposed floor plan drawings.
3. The parking and manoeuvring area shall be kept free of obstructions at all times and used only for the specified purpose.

190 **Proposed changes to the scheme of delegation to the Head of Development Management**

The Head of Development Management submitted a report to seek the agreement of the Planning Committee to proposed revisions to the current scheme of delegation to the Head of Development Management as set out in the council's Constitution.

Resolved

- (1) That the revisions to the scheme of delegation to the Head of Development Management proposed in the report (annex to the Minutes as set out in the Minute Book) be supported.
- (2) That Full Council be recommended to agree the Proposed changes to the scheme of delegation to the Head of Development Management.

191 **Public Speaking at Planning Committee and Members' Planning Code of Conduct**

The Head of Law and Governance submitted a report to consider minor amendments to the procedure for requests by the public to address the Planning and to consider a proposed Members' Planning Code of Conduct to replace the current Good Practice Guidance on Planning Matters contained in Part 3 of the Constitution.

Councillor Macnamara proposed that the scheme be amended to allow members of the public, Ward Members and Committee Members may not show plans, drawings, video clips, photographs or circulate written material. Councillor Reynolds seconded the proposal. The motion was duly voted on and subsequently fell on the Chairman's casting vote.

Councillor Macnamara proposed that the order of speaking within scheme be amended to allow the objectors to speak last, after the applicant/supporters. The motion was duly voted on and subsequently fell.

In response to Members' comments, the Democratic and Elections Team Leader explained the revisions still allowed members of the public to submit a written request to address Planning Committee. The revisions now allowed requests by telephone as well, which was previously not permitted.

Resolved

- (1) That Full Council be recommended to agree the minor amendments to the procedure for requests by the public to address the Planning Committee (Annexes to the Minutes as set out in the Minute Book).
- (2) That Full Council be recommended to adopt the Members' Planning Code of Conduct and Bias and Predetermination: A Guidance Note for Members (Annexes to the Minutes as set out in the Minute Book).

- (3) That authority be delegated to the Head of Law and Governance, in consultation with the Lead Member for Planning and the Chairman of the Planning Committee, to finalise the amended public speaking procedure and members' Code of Conduct for submission to Council.

192 **Decisions Subject to Various Requirements**

The Head of Development Management submitted a report which informed Members upon applications which they had authorised decisions upon subject to various requirements which must be complied with prior to the issue of decisions.

Resolved

- (1) That the position statement be accepted.

193 **Appeals Progress Report**

The Head of Development Management submitted a report which informed Members on applications which had been determined by the Council, where new appeals have been lodged, public Inquiries/hearings scheduled or appeal results achieved.

Resolved

- (1) That the position statement be accepted.

194 **Tracey Morrissey, Principal Planning Officer**

The Chairman advised the Committee that this was the Principal Planning Officer's last meeting as she would be leaving the authority.

The Committee thanked the Principal Planning Officer for her hard work and support to the Committee and wished her every success in the future.

The meeting ended at 9.10 pm

Chairman:

Date:

Cherwell District Council

Planning Committee

19 February 2015

<p>Proposed changes to the scheme of delegation to the Head of Development Management</p>
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Report of Head of Development Management

This report is public

Purpose of report

To seek the agreement of the Planning Committee to proposed revisions to the current scheme of delegation to the Head of Development Management as set out in the council's Constitution.

1.0 Recommendations

The meeting is recommended:

- 1.1 To agree the revisions proposed in the Report.

2.0 Introduction

- 2.1 The current scheme of delegation was introduced in October 2013 and has been operating now for 17 months.
- 2.2 Officers (and officers of South Northamptonshire Council) have undertaken a review of the current scheme to consider whether it is working effectively and to consider if there would be any benefits from revising the scheme.
- 2.3 The aim of the review was to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.
- 2.4 The review was also intended to help expedite the progress of applications to help meet corporate targets for all types of applications and to use the department's resources as efficiently as possible, similarly without compromising quality or the council's corporate objectives. It is imperative to use the council's resources as efficiently as possible. Applications presented to the Committee for determination involve greater officer resources than delegated applications. The reports are generally more detailed and therefore take longer to prepare, there is an administration process involved with taking applications to committee that is not necessary for delegated applications, there is preparation time for presentation to the Committee and Chairman's briefing before the meeting and there is the time

spent attending the Committee itself. This time impacts not only on the speed the particular application being presented to the Committee is determined but the speed at which all other applications are also then determined.

- 2.5 In formulating the proposed changes discussions have taken place with;
- Leader of the Council; Chairman and Vice Chairman of the Planning Committee, and Lead Member for Planning
 - Head of Law and Governance
- 2.6 If the Planning Committee resolves to agree the proposed changes then the proposed revisions to the council's Constitution will be considered by Full Council.
- 2.7 A copy of the current scheme of delegation is attached as Appendix 1 to this report.
- 2.8 A copy of the proposed scheme of delegation is attached as Appendix 2 to this report.

3.0 Report Details

- 3.1 In formulating the proposed revisions the focus has been on the aim of removing certain categories of applications from the need for determination by the Committee to save council time and resources (both councillor and officer) but which at the same time will not compromise the council's decision-making process or its objectives.
- 3.2 Firstly, those applications which are currently NOT delegated and which it was considered should remain with the Committee for determination were removed from further consideration. This included;
- Applications for more than 10 dwellings (except for minor material amendments and the variations and removal of conditions)
 - Departures from the Development Plan
 - Applications called in by Councillors
 - Applications submitted by Officers of CDC with management responsibility in a personal capacity or by Officers of CDC employed in the Development Management Service
 - Applications submitted by a member of staff or Councillor of CDC acting as agent or advisor or consultant
 - Applications referred by the Head of Service.
- 3.3 The categories of applications currently delegated which warranted further investigation and consideration were therefore the following;
- Applications for new buildings where the floorspace to be created is more than 1,000 sqm
 - Applications for development on a site of over 1Ha in size
 - Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)
 - Applications submitted by Councillors of CDC (other than applications relating to works to trees)

- Consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments (unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority)

3.4 Applications for new buildings where the floorspace to be created is more than 1,000 sqm

- 3.4.1 These applications are currently referred to the Committee because they are classed as 'major' applications in the Town and County Planning (Development Management Procedure) (England) Order 2010. During 2014 around fifteen applications were referred because they fell within this category. (Officer Note: some applications fall within more than one category so may be accounted for twice).
- 3.4.2 The possibility of revising this floorspace limit up to 5,000 sqm was considered but subsequently discounted. This was because 1,000sqm is a significant and large building and it was considered that developments on this sort of scale should be referred to the Committee for consideration, albeit that it will occasionally include large agricultural buildings which are an increasingly common feature of our landscape. Development of this scale can have significant visual and other impacts. The types of buildings range across; agricultural buildings, a care home, commercial buildings, a grain store and a training facility.
- 3.4.3 **It is therefore recommended that there is no change to the current scheme in this respect.**

3.5 Applications for development on a site of over 1Ha in size

- 3.5.1 This category accounts for the largest number of applications presented to the Committee in 2014. These applications too are currently referred to the Committee because they are classed as 'major' applications in the Town and County Planning (Development Management Procedure) (England) Order 2010.
- 3.5.2 During 2014, 29 applications were referred because they fell within this category. However, as noted above, some applications fall within more than one category so may be accounted for twice. This is particularly true in this case. For example, the majority of the applications for more than 10 dwellings are on a site over 1ha in area and these would still be referred to Committee as the housing number threshold would remain unchanged. From analysis of the 2014 Committee agendas it would appear that as many as 32 applications may be in this category, and capable of being removed from the need to be dealt with at Committee.
- 3.5.3 This category relates solely to the application site area, rather than specifically to the size of the development proposed (unlike that in 3.4 above). Therefore a large number of these applications actually propose what would ordinarily be considered 'minor' development but which by virtue of the drawing of the red application site boundary result in a referral to the Committee.
- 3.5.4 The types of applications include; hardstandings, fencing of existing pony paddocks, changes of use of land (examples include to recreational use and

equestrian use), small agricultural buildings and stables, portacabins, new access roads and tracks and extensions of time.

- 3.5.5 These are generally minor, less controversial, developments yet due to the volume of applications they take up a significant amount of the Committee's time. It is not considered that delegating these types of applications would affect the quality of the decision or impact adversely on the council's corporate objectives yet it would free up a significant amount of time to allow the Committee to focus on the larger, more controversial applications where value can be more readily added.
- 3.5.6 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the Committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to the Committee.
- 3.5.7 **The recommendation is therefore that applications for development on a site of over 1Ha in size are no longer referred to the Committee as a matter of course but are delegated to the Head of Development Management.** With one exception; some of the applications referred for this reason were for large scale renewable energy schemes (wind farms or solar farms). **It is therefore also recommended that there is an addition to the scheme of delegation and that is applications for commercial renewable energy schemes which will NOT be delegated to the Head of Service.** This would include all free standing wind turbines and all free standing solar panels other than householder schemes.
- 3.6 Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)
- 3.6.1 In 2014, 11 applications within this category were determined by the Committee. Whilst it is considered appropriate in principle for applications affecting the council's land or where the council is the applicant to be considered by the Committee, there are occasions where minor applications of no contention are referred to the Committee which could be as effectively and expeditiously determined under delegated authority.
- 3.6.2 Some of the applications in this category related to applications for signs or public information boards (Members may recall dealing with applications for adverts at Pioneer Square, Bicester for example). It is not considered that applications of this type need to be referred or that such referral adds quality to the decision-making process commensurate with the time that is taken to process them in this way.
- 3.6.3 **It is therefore recommended that applications affecting the Council's own land or where the Council is the applicant will only be presented to the Committee for determination if they are NOT applications for works to trees, advertisements or for public information purposes.** In all other cases they will be determined by the Committee and will NOT be delegated.
- 3.6.4 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to committee.
- 3.7 Applications submitted by Councillors of CDC (other than applications relating to works to trees)

- 3.7.1 Consideration was given to whether there could be changes made to the need to refer ALL of these types of applications to the Committee. Last year only a small number of such applications were referred. Many of which raised no objections by third parties.
- 3.7.2 Consideration was given to whether it would be appropriate to delegate these types of applications UNLESS they were recommended for approval and objections on planning grounds had been made. This would then still enable transparent consideration of applications in the event that objections were received.
- 3.7.3 Advice was sought from the Head of Law and Governance, and council's Monitoring Officer, on the matter and the advice was that this would be contrary to established good practice on probity and would also necessitate the need for an amendment to the Good Practice Guidance on Planning Matters.
- 3.7.4 **In light of this advice it is therefore recommended that there is no change to the current scheme in this respect.**
- 3.8 Consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments, unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority.
- 3.8.1 In 2014 these accounted for 11 applications. Presenting these applications to the Committee can be challenging because of the timescales this council has to respond to the consultations (usually only 21 days unless exceptions can be negotiated).
- 3.8.2 They are also consultations and so the council is responding as consultee rather than having decision-making authority.
- 3.8.3 It is right that on the major applications there should be councillor involvement in the consultation process. However, it is considered that there are ways of achieving this which are preferable to referral to the Committee given the timing challenges faced by officers and concerns expressed by the Committee about the length of some meetings/agendas.
- 3.8.4 **It is therefore recommended that these types of applications/consultations should be delegated to the Head of Service SUBJECT TO the case officer liaising in advance of the decision being issued with the Chair of the Planning Committee and the relevant ward councillor(s) affected.** This would include councillors of adjoining wards where the site is outside Cherwell.
- 3.8.5 This would allow the response to be made within the timescales given, would save the Committee's time but would ensure that there was an appropriate level of councillor involvement in the response that is issued.
- 3.8.6 It should also be noted that the councillor call-in procedure will be unaffected by these proposed changes, as will the opportunity for the Head of Service to refer applications to the committee. Therefore there will always be a 'safety net' if these types of applications are not 'automatically' referred to committee where timescales allow.

4.0 Conclusion and Reasons for Recommendations

- 4.1 Officers have undertaken a review of the current scheme of delegation to consider whether it is working effectively and expeditiously and to consider if there are any benefits from revising the scheme.
- 4.2 The aim of the review was to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.
- 4.3 There are applications which are currently NOT delegated and which it was considered should remain with the Committee for determination and which were removed from further consideration (see para 3.2 above)
- 4.4 The categories of applications currently delegated which warranted further investigation and consideration were applications for new buildings of over 1,000sqm, for development on a site of over 1Ha in size, applications affecting the Council's own land or where the Council is the applicant, those submitted by Councillors of CDC and consultations from neighbouring local authorities.
- 4.5 The analysis of these applications and the relevant recommendations can be found in the above report. The revised scheme of delegation proposed is attached as Appendix 2.
- 4.6 It is recommended that the revised proposed scheme of delegation as attached as Appendix 2 to this report is agreed by the Planning Committee for referral to Full Council for further consideration.
- 4.7 The revised scheme of delegation would result (using 2014 data) in a reduction of circa 42 applications being referred to the Committee overall which over 13 committee meetings is approximately 3 per committee meeting on average.
- 4.8 The proposed revisions are therefore considered to reduce the number of applications determined by the Committee to an acceptable level in order to enable it to focus on the most significant applications. However, as the report explains it will not compromise quality or the council's corporate objectives.

5.0 Consultation

Councillors Rose Stratford (Chair of Planning Committee) , Colin Clarke (Vice Chairman) , Michael Gibbard (Lead Member for Planning) and Councillor Wood

Jon Westerman; Development Services Manager

Kevin Lane: Head of Law and Governance

All consultees support the referral of this recommendation to the Planning Committee.

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: Retain the current scheme of delegation and make no revisions

This option was rejected as it would not achieve the stated aims of officers and the Planning Committee to try and reduce the numbers of applications determined by the Committee in order to enable it to focus on the most significant applications but without compromising quality or the council's corporate objectives.

Option 2: Consider alternative revisions

The reasons for the revisions pursued and investigated are set out in the report. The proposed revisions and the reasons for them are also explained. The revisions put forward are considered the most appropriate to achieve the two main aims as set out above. Any fewer revisions would not have reduced applications being determined by the Committee to a level sufficient to result in a discernible difference and a saving in real terms of the Committee's time. Any more extensive revisions would have conflicted with the aim of the Committee focussing on the more significant applications and achieving corporate objectives.

7.0 Implications

Financial and Resource Implications

- 7.1 There are no financial implications arising directly from this report. The costs of processing planning applications are met from existing resources.

Comments checked by: Nicola Jackson, Corporate Finance Manager
Nicola.jackson@cherwellandsouthnorthants.gov.uk 01295 221731

Legal Implications

- 7.2 The proposed changes are considered to represent a reasonable balance between the efficient conduct of Committee meetings and the need for significant applications to be considered in a member forum. Any proposal to delegate applications submitted by Councillors or senior/development management officers would be contrary to good practice guidance on probity in planning and expose the Council to the risk of allegations of impropriety and lack of openness and transparency. I therefore strongly reiterate the advice contained in paragraph 3.7.3 above.

Comments checked by:
Kevin Lane, Head of Law and Governance 0300 0030107
kevin.lane@cherwellandsouthnorthants.gov.uk

8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

The key corporate priority linked to this decision is “A District of Opportunity” and in particular, the role of the Development Management Service in the following:

- Securing employment-generating development with necessary transport / other infrastructure;
- Proactively monitoring and enforcing the implementation of new developments to ensure they comply with the relevant permission/approval;
- Meeting local performance targets in terms of speed of determination of all forms of application;

Lead Councillor

Councillor Michael Gibbard, Lead Member for Planning

Document Information

Appendix No	Title
Appendix 1	Current scheme of delegation to the Head of Development Management
Appendix 2	Proposed scheme of delegation to the Head of Development Management
Background Papers	
None	
Report Author	Bob Duxbury Development Control Team Leader
Contact Information	01295 221821 Bob.duxbury@cherwell-dc.gov.uk

Appendix 1

Current scheme of delegation to the Head of Development Management

Planning

To determine applications for:

- Planning permission (outline and full)
- Reserved matters approval
- Extensions of time
- Listed building consent
- Conservation area consent
- Advertisement consent
- Variations/removal of conditions
- Discharge of conditions
- Minor material amendments
- Non material amendments
- Certificates of lawfulness for an existing use or development
- Certificates of lawfulness for a proposed use or development
- Certificates of appropriate alternative development
- Applications under the Hedgerow Regulations
- Works to trees protected by a Tree Preservation Order
- All forms of deemed applications (arising from enforcement action)

Apart from the following:

1. All Major applications (full and outline) except for minor material amendments and the variations and removal of conditions.

Major applications would be defined as;

- Applications for 10 or more dwellings
 - Applications for new buildings where the floorspace to be created is over 1000sqm
 - Any development on a site over 1ha in size
2. All recommendations to approve a significant departure from the adopted development plan or other Council approved policies and/or strategies
3. Whether an application is considered to be a 'significant' departure will be determined by the Head of Development Management (or the line manager that reports to the Head of Development Management) in consultation with the Chairman of the Planning Committee (or Vice Chairman in the Chairman's absence).

When deciding if any departure is 'significant' the criteria that will be considered will include, but not be limited to, the following;

- All relevant policies in the development plan and whether the policies are up to date
- Other CDC policies, guidance and strategies
- Government policy
- Scale and type of development

- Site history
- Whether conditions or a legal agreement could address any potential conflict

4. Applications called in by a member of the Council within 21 days of the registration of an application

- The call in request must be for material planning reasons
- The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
- The request must be made in writing by letter or email
- The request must be sent to the Head of Development Management (or the line manager that is responsible for Development Management and reports to the Head of Development Management) and the Chairman of the Planning Committee
- The request MUST contain all the relevant information

On receipt of the call-in request the Head of Development Management (or the line manager that reports to the Head of Development Management and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The councillor who called in the application is encouraged to attend, or send another nominated member to speak

5. Applications submitted by;

- Any Officers of CDC with management responsibility in a personal capacity
- Officers employed in the Development Management Service
- Councillors of CDC (other than applications relating to works to trees)
- A member of staff or Councillor of CDC acting as agent or advisor or consultant

where in any case the Council determining the application is the Council of which the relevant person is an officer or member

6. Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees)

7. Any application which the Head of Development Management considers should be referred to Planning Committee in consultation with the Chairman (Vice Chairman in the Chairman's absence) because of its controversy or significance.

When deciding if an application is controversial or significant, the criteria that will be considered will include, but not be limited to, the following;

- Consultation responses
- Representations
- Level of public interest
- Relevant development plan and other Council policies, guidance and strategies
- Government policy
- Scale and type of development
- Site history
- Whether Planning Committee could realistically and legitimately take a different view from the officer's recommendation and/or the extent to which they are considered to have the potential to 'add value' to the final scheme.

To determine the following;

- All notifications, determinations and prior approval applications (which include those proposals relating to agricultural developments, telecommunications, demolition of buildings, electricity board works and the removal of public pay phones)
- All requests for screening opinions
- All requests for scoping opinions
- All requests and applications for revisions to s.106 agreements
- All consultations from the County Council and neighbouring local authorities that are not Major applications
- Works to trees in conservation area
- Applications for Hazardous Substances Consent

Apart from the following:

All consultations from neighbouring local authorities (including County Councils) that are Major applications (as defined above), including the winning and working of minerals or the use of land for mineral-working deposits and waste developments, unless referral to Committee would take the Council's response outside the time period given for the response by the consulting authority.

Appendix 2

Proposed scheme of delegation to the Head of Development Management

Planning

To determine applications for:

- Planning permission (outline and full)
- Reserved matters approval
- Extensions of time
- Listed building consent
- Conservation area consent
- Advertisement consent
- Variations/removal of conditions
- Discharge of conditions
- Minor material amendments
- Non material amendments
- Certificates of lawfulness for an existing use or development
- Certificates of lawfulness for a proposed use or development
- Certificates of appropriate alternative development
- Applications under the Hedgerow Regulations
- Works to trees protected by a Tree Preservation Order
- All forms of deemed applications (arising from enforcement action)

Apart from the following:

1. All Major applications (full and outline) except for minor material amendments and the variations and removal of conditions.

Major applications would be defined as;

- Applications for 10 or more dwellings
- Applications for new buildings where the floorspace to be created is over 1000sqm
- Applications for commercial (non-householder) renewable energy schemes. Including single wind turbines.

2. All recommendations to approve a significant departure from the adopted development plan or other Council approved policies and/or strategies

3. Whether an application is considered to be a 'significant' departure will be determined by the Head of Development Management (or the line manager that reports to the Head of Development Management) in consultation with the Chairman of the Planning Committee (or Vice Chairman in the Chairman's absence).

When deciding if any departure is 'significant' the criteria that will be considered will include, but not be limited to, the following;

- All relevant policies in the development plan and whether the policies are up to date
- Other CDC policies, guidance and strategies
- Government policy

- Scale and type of development
- Site history
- Whether conditions or a legal agreement could address any potential conflict

4. Applications called in by a member of the Council within 21 days of the registration of an application

- The call in request must be for material planning reasons
- The request must be made within 21 calendar days of the registration of the application as valid (the day after registration to count as day one)
- The request must be made in writing by letter or email
- The request must be sent to the Head of Development Management (or the line manager that is responsible for Development Management and reports to the Head of Development Management) and the Chairman of the Planning Committee
- The request MUST contain all the relevant information

On receipt of the call-in request the Head of Development Management (or the line manager that reports to the Head of Development Management and is responsible for Development Management) will either agree, or refuse, the request in consultation with the Chairman of the Planning Committee (Vice Chairman in the Chairman's absence). The criteria for deciding whether to allow a call-in request will include, but not be limited to,

- whether material planning reasons have been supplied,
- views of parish or town council,
- level of public interest,
- scale and type of development,
- site history,
- statutory time frame for decision,
- relevant development plan policies, council guidance and strategies
- whether the committee could legitimately reach another conclusion than the one reached by officers and/or the extent to which they are considered to have the potential to "add value" to the final scheme.

The councillor who called in the application is encouraged to attend, or send another nominated member to speak

5. Applications submitted by;

- Any Officers of CDC with management responsibility in a personal capacity
- Officers employed in the Development Management Service
- Councillors of CDC (other than applications relating to works to trees)
- A member of staff or Councillor of CDC acting as agent or advisor or consultant

where in any case the Council determining the application is the Council of which the relevant person is an officer or member

6. Applications affecting the Council's own land or where the Council is the applicant (other than applications for works to trees, advertisements or for public information purposes)

7. Any application which the Head of Development Management considers should be referred to Planning Committee in consultation with the Chairman (Vice Chairman in the Chairman's absence) because of its controversy or significance.

When deciding if an application is controversial or significant, the criteria that will be considered will include, but not be limited to, the following;

- Consultation responses
- Representations
- Level of public interest
- Relevant development plan and other Council policies, guidance and strategies
- Government policy
- Scale and type of development
- Site history
- Whether Planning Committee could realistically and legitimately take a different view from the officer's recommendation and/or the extent to which they are considered to have the potential to 'add value' to the final scheme.

To determine the following;

- All notifications, determinations and prior approval applications (which include those proposals relating to agricultural developments, telecommunications, demolition of buildings, electricity board works and the removal of public pay phones)
- All requests for screening opinions
- All requests for scoping opinions
- All requests and applications for revisions to s.106 agreements
- All consultations from the County Council and neighbouring local authorities that are not Major applications
- Works to trees in conservation area
- Applications for Hazardous Substances Consent
- All consultations from neighbouring local authorities (including County Councils) that are Major applications SUBJECT TO the relevant case officer consulting with the Chairman of Planning Committee (or the Vice-Chairman in his absence) and relevant Ward Councillor(s) (including adjoining Wards as considered necessary) in advance of a response being issued. The case officer will notify the Chairman of Planning Committee and relevant Ward Members of the date of the Committee meeting at which the adjoining authority/county council will be considering the application.

Extract from the Constitution: Section 2.6, Planning Committee Procedure Rules

Requests by the Public to Address the Planning Committee

1. Members of the public, including the applicant (or their representative), representatives from the relevant Town or Parish Council, local interest groups and local civic societies, may address Planning Committee during consideration of any application for planning permission
2. The following groups may address the meeting for up to five minutes each:
 - Objectors
 - Applicant and/or Supporters

Where more than one person has registered to speak in any of the above groups of speakers, the five minute period shall be shared. In ~~these such~~ circumstances, Objectors are encouraged to appoint a spokesperson. If no spokesperson is nominated, Objectors will be heard in the order in which they have registered until the five minute period has elapsed. The Applicant (or their agent) will speak first in their five minute period followed by any other supporters until the five minute period has elapsed.

3. ~~The deadline to register to An application to speak at Planning Committee is midday on the last working day before the committee meeting. Requests must be made received in writing or by electronic mail to by Democratic and Elections Services by midday on the last working day before the committee meeting.~~

Applications to speak at Planning Committee will only be accepted by persons who have made written representations on an application as part of the consultation process or the applicant or the applicant's agent.

Persons who have registered to speak may appoint someone to speak on their behalf provided that ~~written authority from~~ the person who has registered to speak ~~notifies is given to~~ Democratic ~~and Elections Services~~ before the Planning Committee commences.

4. ~~Persons registering to speak must provide Applications to speak must include the name of the person wishing to speak, register and a contact telephone number, the application they wish to speak on, whether they will be speaking in support or objection to the application and the capacity in which they are registering. Persons registering to speak Applicants~~ should also confirm if they are willing for the Council to share their contact details with other speakers so that arrangements can be made to nominate a spokesperson if necessary.
5. When there is a linked or duplicate application each speaker can only speak on one application site, regardless of the number of applications for that site.

For example, in the case of linked applications for planning permission and listed building consent on the same property, speakers may only speak once.

6. Public speaking at Planning Committee is only permitted on planning applications, not any other report submitted to the Committee.
7. When planning applications are referred to full Council ~~by Councillors~~ the normal Council public speaking rules apply, as set out in the Council procedure rules.

Procedure

8. Any requests to speak received after midday on the last working day before the committee meeting will not be accepted.
9. ~~Members of the public who have registered to speak must sign a declaration of conduct at Planning Committee. Members of the public who do not sign the declaration will not be permitted to address the Committee.~~
10. Before the planning application report is considered in detail, the Committee may agree to defer ~~that~~ the application ~~be deferred~~ for a site visit or to obtain further information. In such cases, there will be no public participation on the application until it is reconsidered at a future meeting. Persons who have registered to speak on applications that are deferred to a future Planning Committee meeting are not required to register again.
11. The Planning Officer will present the application to the Committee and inform Members of any late representations or updates.
12. Ward Members and any Members of the Committee with a significant prejudicial interest (excluding disclosable pecuniary interest in which case the member must leave the meeting for the duration of the item) will then be entitled to speak on the application. ~~After making their presentation Ward Members may, at the discretion of the Chairman, answer questions and sum up their view at the end of the debate. They then must return to the public gallery. Members of the Committee with a prejudicial interest must leave the room for the debate and vote.~~
13. The persons who have registered to speak will ~~then~~ be introduced by the Chairman in order of Objectors and Supporters, with the applicant always speaking first in their allotted time. Once a speaker has made their statement there will be no further right to address the meeting and at the speaker must return to the public gallery.
13. The Planning Officer will ~~then~~ clarify any planning points made by speakers relevant to the application.
14. The Committee will debate the application and make a decision on the application. Should the Committee choose to defer the application for a site

visit or further information after the public speaking part of the item has passed, when the application is brought back to Committee, no public speaking will be permitted unless there are significant material changes to the application in the meantime. This will be at the discretion of the Chairman.

15. Members of the public, Ward Members and Committee Members may not show plans, drawings, video clips, photographs or circulate written material.
16. The Chairman of the meeting may:
 - (a) vary the order of representation if he/she considers that it is convenient and conducive to the despatch of the business and will not cause prejudice to the parties concerned, or
 - (b) remove any person from the meeting if they behave in a disorderly manner.

How to have your say at planning meetings

Members of the public have the right to speak at Cherwell District Council planning meetings. This leaflet explains how.

The Planning Committee considers certain applications for planning permission. Members of the public may request to speak on applications considered at a meeting of the planning committee if they have made written representations on an application.

This gives you an opportunity to give your views in person to the committee. The committee will continue to take account of letters of support or objection.

The opportunity to speak is available to applicants or their agents, objectors, local residents, town/parish council representatives and any other person with an interest in a certain application, providing they have made written representations on an application. Public speaking only applies to applications which are considered put forward to by the committee, not applications that are determined by Planning Officers.

When and where does the planning committee meet?

All committee meetings are held in the Council Chamber at Cherwell District Council Offices, Bodicote House, Bodicote OX15 4AA.

The planning committee meets every 4 weeks at 4pm on a Thursday. ~~AA~~ full calendar of meetings can be found on our website: www.cherwell.gov.uk. ~~you can also watch a m~~ Meetings ~~s as they~~ are web cast live on the internet and available to view for 6 months after the meeting date.

Who can speak?

Applicants (people applying for planning permission) or their agents, parish/town council representatives and any person or group who has made written representations on the application.

Which planning applications can I speak on?

Any planning application for determination that you have applied for, or made a written representation on, as part of the planning consultation process. You cannot speak on legal or enforcement action when the committee is considering whether to take legal action or monitoring reports.

When will the application be considered?

Applications will usually be considered in the order in which they appear on the agenda of the meeting.

The Chairman has the discretion to change the order agenda items are considered in. If your application is a later item on the agenda, please be aware it may be considered earlier.

~~However, the An~~ application may be deferred layed until another meeting if further information, negotiations or a site visit is needed. If an application is deferred, public speakers are not required to register again if they have not spoken. However, if public speakers have already addressed the Committee, no further public speaking will be permitted unless there are significant material changes to the application in the meantime. This will be at the discretion of the Chairman of the Committee. ~~If this happens then public speakers are not required to register again.~~

What is the procedure for speaking?

The One of the planning officers will present the application referring to the report in the published agenda. The report will include a planning officer's recommendation as to whether it should be approved or refused.

Following the presentation by the planning officer, 's report the local Ward Member (if not a member of and any members of the Committee) and any members of the Committee with a significant who have a prejudicial interest (unless a disclosable pecuniary interest in which case the member must leave the meeting for the duration of the item) will have the opportunity to speak.

The following groups of speakers will be introduced and invited to speak by the Chairman of the meeting:

People who have registered to speak will be introduced by the Chairman in order of objectors and applicant or agent/supporters. The applicant will speak first in their 5 minute period.

The planning officer will then clarify any planning points in the speakers' statement, relevant to the planning application. The Committee will debate the application and make a decision on the application. If the committee approve it they may also vote to impose certain conditions on the application.

~~You will only have one opportunity to speak at the meeting, on any one application.~~

How long will I be able to speak?

Applicants will be grouped into applicant/supporters and objectors. Each group can speak for up to 5 minutes. If more than one person has registered to speak in each group the 5 minutes will be shared. ~~In such those~~ circumstances speakers are encouraged to nominate a spokesperson. If no spokesperson is nominated speakers will be heard in the order in which they have registered to speak, on a strictly "first come, first served" basis until the 5 minutes has elapsed. This does not apply to the applicant/supporter group where the applicant or their agent takes precedence in the 5 minute speaking slot.

There is no time limit for the local Ward Member, although this should be within reason and is at the discretion of the Chairman.

How can I best use my time when speaking to the committee?

This will depend on the planning application but please try to limit your views to relevant planning issues. The committee take these types of issues into account when making their decisions:

- Whether the site is suitable for development
- Design, appearance and layout
- Over-looking and over-dominance
- Highway safety and traffic
- Noise, disturbance and smell
- National and Local planning policy and guidance.

The Committee must ignore non-material considerations when making their decision.

Can I bring handouts to distribute to the Committee?

No. Members of the public, Ward Members and Planning Committee members may not show plans, drawings, photographs, video clips or circulate written material, as this opportunity has already been given as part of the planning consultation process.

~~Which planning applications can I speak on?~~

~~Any planning application for determination that you have applied for, or made a written representation on, as part of the planning consultation process. You cannot speak on legal or enforcement action when the committee is considering whether to take legal action.~~

How do I arrange to speak at a meeting?

Requests to address the Planning Committee on a particular application will not be accepted until it has been included on a published agenda.

If you want to speak on an application you will need to contact Democratic ~~and Elections Services in writing by post or email~~ no later than 12 noon on the last working day before the meeting. You must ~~provide~~ indicate the application you wish to speak about, your name and email address or telephone number, the application you wish to speak about, ~~You must indicate~~ whether you are an objector or supporter and the capacity in which you will be speaking. You will be asked ~~Please indicate~~ if you are willing to share your contact details with other speakers so that arrangements can be made to nominate a spokesperson.

~~Letters should be addressed to
Democratic Services,
Bodicote House,
Bodicote Banbury
OX15 4AA~~

~~and eEmails: -sent to
democracy@cherwell~~andsouthnorthants-de.gov.uk

~~Phone: 01295 221534~~

~~On the last working day before the Committee meeting when the deadline to register has passed Democratic Services will confirm if you are eligible to address the committee and will circulate contact details where appropriate. any~~Any requests to speak received after midday on the last working day before the Committee meeting will not be accepted.

How to contact us

Democratic Services
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire
OX15 4AA

Tel: 01295 2215~~3491~~

Email: democracy@cherwell~~andsouthnorthants-de~~.gov.uk

Call 01295 2215~~3491~~

or visit www.cherwell.gov.uk

3.5 Members' Planning Code Of Conduct

If you have any doubts about the application of this code to your own circumstances you should seek advice, preferably well before any meeting takes place.

About This Code:

This code:

- is based on a Model Code which was prepared by the former Association of Council Secretaries and Solicitors;
- supplements the Members' Code of Conduct; and
- applies to:
 - o Members **at all times** when involving themselves in the planning process
 - o at less formal occasions such as meetings with officers or the public and at consultative meetings
 - o both planning application matters and to enforcement matters.

The Planning System – The Members' Role

The key purpose of the planning system is to manage development in the public interest. The Members' role is to make planning decisions

- openly and transparently
- impartially
- for justifiable planning reasons.

This Code aims to ensure that all decisions are made in accordance with these principles.

Key Points (Golden Rules)

Planning decisions involve a balance between private and public interests where opposing views are often strongly held.

Your overriding duty is to the whole community not just to the people in your ward.

Decisions must not only **be** impartial they must be **seen to be** impartial. You should not favour, or appear to favour, any person, company, group or locality. You should not give the appearance of pre-judging ("pre-determining") the matter before it is considered by the Committee.

Planning decisions must be made in accordance with the statutory development plan unless material planning considerations indicate otherwise.¹

The views of officers involved in the determination of planning matters will be presented on the basis of their overriding obligation of professional independence.

You may think that material planning considerations outweigh the development plan, or take a different view of the planning balance than is contained in the officer recommendations. You are fully entitled to do so but you will need to make sure that you can clearly identify and support the planning reasons leading to this conclusion/decision. Advice should still be sought from Planning Officers in relation to setting out the rationale for your decision.

Essential – Do's and Don'ts

Disclosable Pecuniary Interests

DO, as soon as you become aware that you have a disclosable pecuniary interest in any matter to be discussed at a meeting, make a verbal disclosure of that interest.

DO leave the meeting before that matter is discussed or, if you realise after the discussion has begun, as soon as you have made your disclosure.

DON'T participate in the discussion or vote on a matter in which you have a disclosable pecuniary interest unless you have been granted a dispensation.

DO notify the Monitoring Officer of your disclosable pecuniary interest in writing within 28 days of your disclosure unless it is already included on your register of interests form published on the Council's web site.

DO seek advice from the Monitoring Officer if you are in any doubt about what to do.

Where you have a Disclosable Pecuniary Interest

DON'T get involved in the processing of the application.

DON'T attend any formal or informal meeting about the application or seek to speak at meetings.

DON'T try to represent local views.

DON'T participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.

DON'T seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a councillor. This would include, where you have a disclosable pecuniary

¹ Section 38(6) Planning & Compulsory Purchase Act 2004

interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

DO be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a disclosable pecuniary interest to an appropriate officer (in person or in writing), the Code places greater expectations as to conduct than would be imposed on a normal member of the public.

Your Own Proposals

DO notify the Monitoring Officer, in writing, of your own proposals and those where you act as agent for a third party - this notification should be made no later than the submission of the application. These proposals will be reported to the Committee as main items and not dealt with by officers under delegated powers.

Where you have no Disclosable Pecuniary Interest

You may take part in the decision making process but need to take account of the following points:-

Do keep at the front of your mind that, when you come to make a decision, you:

- are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
- must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all sides;
- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a member, in giving fair consideration to points realised;
- are only entitled to take into account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
- are to come to a decision after giving what you feel is the right weight to those material considerations

Bias and predetermination – don't fetter your discretion²

DON'T fetter your discretion by approaching the decision with a closed mind. Doing so will prevent you from participating impartially in planning decisions: making up your mind ("**pre-determination**"), or even appearing to make up your mind in advance of the Committee meeting, and of your hearing the arguments on both sides, may put the Council at risk of legal proceedings.

² Members should also have regard to the Council's more detailed guidance: ***Bias and Predetermination: A guidance note for members***

Remember:

- Planning decisions should only be taken with knowledge of all the relevant considerations, including responses to consultations where relevant. The officers' reports are intended to bring together all relevant considerations, and further matters may arise at the committee meeting. It is therefore not possible to come to a firm decision in advance of the meeting. You may have a view as to how you will decide a particular matter ("**pre-disposition**") but you must keep an open mind at the meeting.

Where you have Fettered your Discretion

- Don't speak and vote on the proposal at the meeting;
- Although you are not required to withdraw from the meeting, you may prefer to do so to avoid any complaint that your presence influenced the decision.

You can still exercise your separate rights as Local Ward Member where you have fettered your discretion. If you do exercise that right:

- advise the Proper Officer or Chairman that you wish to speak in this capacity before commencement of the item; and
- remove yourself from the room for the duration of that item.

District Council Proposals

DO be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. (This is more than just a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits). The best advice in these circumstances is not to take part in the decision or vote on the proposals.

Participation in the Discussions of Consultee Bodies

Members may have a dual role as both members of organisations that are consulted on planning proposals and as members of the Planning Committee. In those circumstances:-

You may take part in discussions of the consultee body on the proposal **IF** you make it clear to the consultee body that:

- your views are expressed on the limited information before you only, **AND**
- you must reserve judgement and the independence to make up your own mind on the proposal based on your overriding duty to the whole community and not just to the constituents of that body, **AND**

- you will not commit yourself as to how you or others may vote when the proposal comes before the Planning Committee.

How to Deal with Lobbying

DO remember that your overriding duty is to the whole community not just to the people in your Ward. You need to make decisions impartially. Make sure that you do not favour, or appear to favour, any person, company, group or locality.

DON'T declare the way you intend to vote

DON'T express any opinion on the merits prior to your formal consideration of the matter at a meeting(s) of the planning authority unless you make it very clear that you will only make up your mind at the meeting after hearing the officers' presentation and evidence and arguments on both sides.

DO explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it prejudices your impartiality to express a firm point of view or an intention to vote one way or another.

Unless you have a Disclosable Pecuniary Interest, you may:

- listen/receive viewpoints from residents or other interested parties;
- make comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-determining the issue and you make clear you are keeping an open mind;
- seek information through appropriate channels; or
- be a vehicle for the expression of opinion or speak at the meeting as a local member, provided that, if you are a member of the Committee, you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or local view, you will make up your own mind having heard all the facts and listened to the debate.

Dealing with Particular Groups

• ***Applicants/Developers***

DO refer applicants/developers who approach you for planning or procedural advice to officers wherever practicable.

DON'T agree to a meeting with applicants or developers where you can avoid it, except where this is part of a meeting organised by an officer and at which an officer is present. (Councillors do not normally take part in officers' discussions with applicants before a decision is taken, unless there are clear guidelines published by the Council to protect and assist councillors and officers. Where you do become

involved, you should be advised by the appropriate officers and the discussions should be recorded as a written file note.)

DO ensure that you report to the Head of Development Management any significant contact with the applicant and other parties and explain the nature and purpose of the contacts and your involvement in them. Ensure that this is recorded on the planning file.

DO make it clear that you will **only** be in a position to make a final decision on the application after having heard all the relevant evidence and arguments at Committee.

DO consider whether it would be prudent to make notes of what is said if no officer is present.

- ***Lobby Groups***

DON'T become a member of, lead or represent a lobby group seeking to promote or oppose planning proposals. If you do and you are a member of the Committee, you will have fettered your discretion.

- ***Political Groups***

DON'T decide how to vote at any sort of political group meeting, or press any other Member to do so, in advance of the meeting at which any planning decision is to be taken.

- ***Presentations***

DON'T attend presentations unless they have been organised by officers and an officer is present.

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

DO remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the appropriate Committee of the planning authority.

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

- ***Undue or Excessive Lobbying***

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

Gifts and Hospitality

Be careful about accepting gifts or hospitality wherever possible. If some hospitality is unavoidable, ensure that it is not excessive or inappropriate. Whilst not a disclosable pecuniary interest, a member, nevertheless, has the option of registering this so as to demonstrate openness and transparency to avoid any allegation of corruption or impropriety.

Dealings with Officers

DON'T put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views on the proposal, which may be incorporated into any committee report.)

DO recognise that officers are part of a management structure and only discuss a proposal, except in any formal meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level.

DO recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

Site Visits

DO ensure that you treat the site inspection only as an opportunity to seek information and to observe the site.

DON'T express opinions or views to anyone.

DO try to attend site visits organised by the Council where possible.

DO ask questions or seek clarification of matters that are relevant to the site inspection.

DON'T hear representations from the applicant or third parties.

DON'T visit a site on your own, even in response to an invitation, as this may give the impression of bias. Exceptionally, where there is no organised site visit, and with the prior approval of the Head of Development Management, the local ward member or in appropriate circumstances other members, may ask for an individual site visit accompanied by an officer (there is nothing preventing you from viewing a particular site from the public highway).

Communication with the Public at Committee Meetings

DON'T allow members of the public to communicate with you (orally or in writing) during the Committee's proceedings, as this may give the appearance of bias.

Making Decisions

DO comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.

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

DON'T vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.

DO ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons are recorded and repeated in the report to the Committee.

DO have recorded the reasons for any Committee decision to defer a proposal.

Where the Officers' Recommendation is not Accepted

Decisions on planning matters (unless delegated to officers) are ultimately for members to make. But decisions, whoever makes them, must be made in accordance with the development plan unless material considerations indicate otherwise³.

If the officers' recommendation is not to be followed, equally robust planning reasons for the decision must be given at the meeting and minuted. Those reasons must be capable of being defended at any subsequent appeal.

Officer reports will include a recommendation based on an assessment of the proposal against the development plan and material considerations, including those arising from the representations made by the applicant and consultees. The reasons for the recommendation will be set out in the report. If members take a different view at the meeting, they will need to provide equally argued planning reasons. If on reading the officers' report, you form an initial impression that leads you to be pre-disposed to go against the recommendation, it may help to discuss tentative reasons with officers before the meeting.

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

Procedure if Officers' Advice is not to be Followed:

Proposer to set out planning reasons for the proposal.

³

Section 38(6) Planning & Compulsory Purchase Act 2004

Officers to be given time to comment on those reasons and their ability to withstand challenge through the appeal procedures.

Chairman may adjourn briefly for proposer and seconder to discuss and formulate reasons with officers, reconvening for a vote and for reasons to be fully recorded. If Chairman concludes that there are opposing views amongst Committee members he may take a vote on the proposal without adjourning for discussion with officers. In such circumstances the planning reasons for the proposal should be set out in detail before the vote is taken.

Training

DON'T participate in decision making at meetings dealing with planning matters if you have not attended any mandatory planning training prescribed by the Council.

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

In accordance with Government guidance, it is Council policy that every Member of the Council must receive formal training in the planning system before serving on the Planning Committee. Similarly, any present or newly elected Member participating in the determination of a planning application by full Council, must receive such training before taking part.

If training is declined or not undertaken for any reason, then the Member concerned would not be able to participate in Planning Committee meetings or at meetings of full Council when it is determining a planning application.

Sanctions

Sanctions (including offences)

If you do not follow this code, you may put:

- The Council at risk of proceedings on legality or of maladministration;
- Yourself at risk of breaching the Members' Code of Conduct.

It is a criminal offence (without reasonable excuse), if you are aware that you have a disclosable pecuniary interest in a matter being considered at a meeting:

- Not to disclose that interest (unless it is already registered)
- To participate in any discussion or vote on that matter.

External Sanctions

These include:

Local Government Ombudsman

The Ombudsman can investigate the process by which a planning decision has been taken (though not the decision itself). If injustice caused by maladministration is

found, the report may name the Member involved and give particulars of the breach. The report may be made publicly available.

Appeals to the Secretary of State

If an appeal is lodged and the Council is found to have been unreasonable (for example by making a decision for inadequate planning reasons) the appellant's costs may be awarded against the Council.

Judicial Review

If the Council can be shown to have not followed the correct procedures in determining an application or to have taken into account irrelevant considerations, the court may quash the decision. The claimant's costs would normally be awarded against the Council.

Bias and Predetermination

A Guidance Note for Members

Introduction

- 1) Local Authorities are legal entities that are required to make decisions in accordance with the law and in accordance with their own governance arrangements as set out in a Constitution and a Code of Conduct. Each Principal Authority must appoint a Monitoring Officer who has responsibility to ensure lawful decision making. The Monitoring Officer is required to report to the Authority where the actions of the Council itself, its Committees or Sub-Committees, Councillors or employees give rise or is likely to give rise to a breach of any legal enactment or maladministration (Section 5 of the Local Government and Housing Act 1989).

Lawful Decision Making

- 2) There are certain procedural requirements in relation to the membership and operation of decision making meetings and legal requirements as to the provision of sufficient information to enable informed decisions to be made. There can also be legal requirements to undertake consultation before decisions are made. Where consultation is required (or whenever it is undertaken) it must be done properly and the results taken into account by the decision maker, before a final decision is made.
- 3) It is essential that the public have confidence in the procedures adopted and that Members themselves ensure that decisions are properly taken in accordance with legal requirements.
- 4) Legal challenges are common, particularly on controversial matters, and the limits of judicial review mean that whilst claimants will often be aggrieved with the merits of a decision it is more often the case that challenges are brought on the basis of alleged defects in the decision making process.
- 5) The key components to lawful decision making are that Members do not close their minds to permissible outcomes, consider issues in good faith without the presence or appearance of bias, have regard to all relevant considerations and act in accordance with the law.

What is Predetermination or Bias?

- 6) Predetermination is where a Councillor's mind is closed to the merits of any other arguments about a particular issue on which they are making a decision and that they have already made their minds up about it. The Councillor makes a decision on the issue without taking all relevant information into account.

- 7) Predetermination is therefore the surrender by the decision-maker of his/her judgement by having an evidentially closed-mind such that they are unable to apply their judgement fully and properly to an issue requiring decision.
- 8) It is essential that Councillors do not appear to have already made up their minds in advance of the meeting itself. Such impressions can be created in a number of different ways such as quotes given in the Press or what is said at the meeting itself or at other meetings and in correspondence (particularly, nowadays, in e mails) Predetermination may amount to a form of bias.
- 9) Bias can also occur where the private interests of a Councillor impact or may be perceived to impact on their decision making. For example, where the Councillor's relationship with any person or body/agency who may be affected by the decision may reasonably be perceived to affect, their ability to weigh matters fairly and properly. Bias is conduct that, to a fair-minded and informed observer, gives rise to a real possibility that a member is biased in the sense of approaching a decision with a closed mind and without impartial consideration of all the issues. Bias is technically of two sorts: actual bias and apparent bias. The latter is easier to allege and establish. The test is whether a reasonable, informed observer would take the view that there was a possibility of bias¹. If a Member participated in a decision despite having a pecuniary interest then that would be actual bias. Giving the appearance of having a closed mind on an issue may lead to an allegation of apparent bias.
- 10) In instances of both predetermination and bias, the implication is that a decision will be taken in a particular and fixed way irrespective of the merits or the information provided at the meeting.

Consequences

- 11) Where a Councillor has a closed mind, this potentially has a direct impact on the validity of the decision and might make the decision challengeable either by way of Judicial Review or some other legal appeal process. If proven it would amount to a procedural irregularity and might mean that the decision taken by the Committee is then regarded as unlawful and void.
- 12) Challenges can also be made via a complaint to the Local Government Ombudsman who can investigate the matter and has power both to secure documentation held by the council and to require witnesses to attend for interview. A finding of maladministration requires the Council to place a public notice of the findings, debate at full Council and respond to the findings.
- 13) The Monitoring Officer also has the power to investigate a matter and decide if there has been any procedural irregularity as well as a possible breach of the member's code of conduct.

Predisposition

¹ R (on the application of Ortona) v SSCLG 2009 JPL 1033. See Georghiou v LB Enfield (2004) EW HC 779.

- 14) Predisposition means that a person has not yet fully made up their mind about an issue. Although they may have policy, personal or other legitimate reasons to be disposed toward a particular outcome, predisposition still holds open the possibility that the member will have regard to all of the evidence provided to him or her and is still open to persuasion on the facts of the case.
- 15) The law recognises that a Councillor may be predisposed to a particular view on issues but this in itself is not a bar from them taking a full part in the decision making. Provided they have an open mind to the merits of the arguments before they make a final decision on the specific issue before them e.g. a general antipathy to wind farms does not preclude a specific decision about a specific application for a wind turbine planning application in a specific locality. The general view does not close the member's mind to the relevant facts concerning the specific decision that needs to be taken.
- 16) By the nature of the councillor role, elected members will have predispositions on matters of policy, or perhaps on a local issue for which they have campaigned or stood for election. The holding and expression of views, even strong views, is to be expected. The common law recognises this and has established that only if a councillor firmly closes his/her mind to any other possibility (when called upon to take or participate in a decision) will the courts judge the matter as having strayed into predetermination or bias.
- 17) The law recognises that Councillors do have opinions and views on a wide range of issues and whilst not having a closed mind, nevertheless, they are not expected to have an empty mind!**

Localism Act 2011

- 18) In order to make it explicitly clear that all Councillors should be entitled to speak on behalf of their communities without necessarily precluding themselves from local decision making, Section 25 of the Localism Act 2011 was implemented to address this issue. In effect, expressions of a view on a particular local planning issue, or campaigning for election on a particular platform, should not of itself be treated as evidence of a closed mind on a particular matter which would prevent them from participating in Council business relating to that issue.
- 19) Section 25 states that if there is an issue about the validity of a decision as a result of an allegation of bias or predetermination (either actual or apparent) then in those circumstances a decision maker is not to be taken to have had or to appear to have had a closed mind just because he or she has previously done anything that directly or indirectly indicated what view they might take or would take in relation to the matter.
- 20) The clear intention of the legislation is to allow Members to feel more confident in becoming involved in local debate without fear of precluding themselves from taking part in decision making.
- 21) This is based on the principle that a member should be deemed to be open to persuasion on the facts of the case before the actual decision is taken at the

Committee, having taken into account the relevant Committee reports, the debate, advice provided, consultation undertaken and any representations made at the meeting i.e. taking into account all of this information and only then making a decision.

22) However, this Section does not provide blanket protection or immunity for anything that is said by a Member. The test of what an 'impartial and fair minded observer would think'² would still apply in relation to interests or relationships, which bring into question issues of undue influence or bias. The protection of Section 25 only relates to previous statements not being **in of themselves** proving predetermination or bias. If there is other evidence available to demonstrate predetermination or bias then such statements might then become admissible.

Freedom of Speech

23) There is an important difference between those Councillors who are directly involved in making a decision and those Councillors who are legitimately seeking to influence that decision. Councillors who are not involved in making a decision are generally free to speak how they want with regards to a matter and indeed frequently take on the role of advocate for the local community. This can include attending a decision making Committee as a non-Committee member and, with the leave of the Chairman addressing the Committee on the merits of the matter before it.

Case Law

24) The Localism Act effectively confirms and re-states the established case law in relation to predetermination and it is therefore helpful to consider such cases as they provide practical examples of instances where predetermination was not proven.

R (Lewis) v Redcar and Cleveland Borough Council [2010] UKSC11

25) A highly controversial decision taken just before an election was unsuccessfully challenged. Members were entitled to be predisposed to determine an application in accordance with their own political views and policies, provided that they listened to the arguments and had regard to all material considerations. Neither the proximity of the local election nor the unanimity of the members of the majority group in themselves were capable of demonstrating that those who voted in favour of the application had closed minds to the planning merits of the proposal.

R (Island Farm Development Limited) v Bridgend CBC 2006 EWHC 2189

26) This case involved a refusal by a Local Authority to sell land to the claimant who wished to develop it. There were strong local feelings about the matter and indeed several members of the Council had been elected having campaigned

² Porter v Magill 2001 VKHL 67

against the sale. The Judge held that Members were entitled, when making decisions on local issues, to take into account policies they believe in, especially if they have been part of a manifesto in a local election. Prior statements were simply evidence of predisposition, not of closed minds.

Condron v National Assembly for Wales [2006] EWCA Civ 1573

27) In the case of Condron, a Member as he walked into the building just prior to the meeting, was asked how he was going to vote and stated that he was “going with the Officer recommendation”. Even in this instance, where there was explicit evidence of intention, nonetheless, the Courts ruled that there was no evidence that at the meeting itself the Member had a closed mind as there was no evidence to suggest that he wouldn’t have changed his mind as there was still the possibility that he might have changed his opinion depending on what he had heard.

Conclusion

28) The legislation is clear that whatever a Councillor says or does prior to the meeting cannot by itself, be used as evidence of predetermination or bias provided they conduct themselves appropriately and consider and weigh the matters at the meeting itself before reaching a decision.

29) Nonetheless, separate from the legal protection, Councillors also need to guard against the perception or unfounded allegations of predetermination and bias. Therefore, it is important for Councillors to explain that their views are preliminary and are not to be taken as their final decision and that they have retained an open mind and will listen to both sides of the argument before reaching a final conclusion.

Gifts and Hospitality

30) Councillors are no longer legally required to register gifts and hospitality. The key concern that may arise is that the acceptance of gifts and hospitality might give rise to a perception of actual or apparent bias.

31) Members should always approach decision-making with an open mind. There may be instances where offers and acceptances of gifts and/or hospitality may give the impression of real or actual bias. For example, if they are particularly lavish, frequent or timed to coincide with decision-making or from a company or community group which stands to be affected by the decision to be taken.

32) Consequently, members should always view offers of gifts and hospitality cautiously and particularly so if there is any association between the originator and any decision which a councillor will or may take. Remember, the *appearance* of bias - to a ‘fair minded and informed observer’ (i.e. the courts) - is sufficient to potentially undermine an authority’s decision-making process.

33) Gifts and hospitality should never be sought or solicited; and where offered they should generally be declined; and certainly so if they relate to potential decision-

making, either at a specified or potential future time. This would protect the councillor, and the council, from allegations of bias and influence and would maintain the integrity of democratic decision-making.

- 34) It remains open to councillors voluntarily to register offers/acceptances of gifts as non-pecuniary interests should they wish to do so. The register of interests form contains a section where members can record any non-pecuniary interests in addition to the statutory disclosable pecuniary interests which they are required to record. Members are strongly advised to register such interests to demonstrate openness and transparency.

Bribery

Act

- 35) It is a criminal offence under the Bribery Act 2010 to request or receive money or other advantage in return for improperly doing or not doing an act as part of your Councillor role. Voluntary registration of gifts and hospitality received or offered protects both you and the Council from such allegations of corruption. The declaration form has a section which can be used for these voluntary disclosures of interest.

Membership of Organisations

- 36) Councillors and co-opted members will often be members of outside organisations, locally or nationally, either in their private capacity or as appointed by their councils. This can include community groups, lobby groups, political parties and trade unions.
- 37) An association with such a group could, conceivably, be a factor in any allegation of real or actual bias. This would depend on the circumstances of the case. Mere membership is unlikely to be an issue. However, active involvement in the promotion of a particular cause or object, if this is germane to a decision before the council, may well give rise to an appearance of bias.
- 38) In order to strengthen openness and transparency it is advisable for Members to register such membership in order to protect themselves and the Council from allegations of bias or of having a particular hidden agenda.
- 39) It is always open to members voluntarily to declare any other personal interests in that section of the Register of Interests Form provided for this purpose. If a member considers that a personal interest, other than a disclosable pecuniary interest, would conflict with their responsibilities to abide by the Seven Principles of Public Life (the 'Nolan Principles') then these can be included in that latter section of the form.

- 40) One of the Nolan Principles is that:

"Holders of public office must avoid placing themselves under any obligation to people or organisations that may try inappropriately to influence them in their work"

41) Therefore, members need to be mindful of any pronouncements they may make as part of such organisations, either on their behalf or individually.

Trade Union Representation

42) Insofar as any such association may involve sponsorship (by that organisation) e.g. by a Trade Union then registration is already required as a Disclosable Pecuniary Interest. The relevant Regulations explicitly provide that sponsorship includes “any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992”. This means that sponsorship by a trade union will be a disclosable pecuniary interest and should be registered as such.

Dual/Triple Hatted Members

43) Dual and triple-hatted members need to balance their legitimate right to express views while protecting the integrity of council decision making from allegations of real or apparent bias and predetermination arising from potential conflicts of interest between the two Councils he or she represents.

44) Members of more than one local authority may occasionally find themselves in a position where they have made a decision or been consulted on a matter in one authority which then comes up for consideration in another authority. In those circumstances, advice should be sought from the Monitoring Officer as to whether or not the initial involvement precludes them from taking part in the decision making.

45) Members may also need to be cautious as to whether they can take part in a decision that has financial implications, either positive or negative, for the other public body. Again the advice of the Monitoring Officer should be sought.

Community meetings

46) Where a member agrees to chair a community or public meeting on a particular planning matter, the member should make it clear at the outset the capacity in which they are acting (e.g. as a facilitator to local discussion) and make a very clear statement setting out that they are taking part with an open mind. It is suggested that members' might want to use the following words to do this (varied to name the particular meeting) and perhaps to include a copy as an annex to the minutes:

I have agreed to chair this meeting [Liaison Committee etc] in order to enable meetings to take place between [local residents, the Parish Council, the operator, the landowner, the District Council through its officers, and other interested parties]. I intend to listen to the views and opinions put forward by all parties at this meeting but I would like to make it clear that insofar as there is any discussion or consideration of a proposal by any party that may require planning permission, all parties should be aware that notwithstanding anything I may hear or any comment I may make at these [Liaison] meetings, this is not

the correct forum to determine any such matters and that I will make my decision on such matters at the relevant Council meeting with an open mind and based on all the evidence presented at that meeting.

47) A version of this statement could also be made if a member is participating in, but not chairing, such a meeting, for the avoidance of doubt.

Code of Conduct

48) Members will be familiar with their responsibilities under the Code of Conduct to register and declare disclosable pecuniary interests and any other non-pecuniary interests which they wish to register. These provisions protect council decision-making, and members themselves, where private interests may otherwise conflict with public duties.

49) If you are a member of a planning committee you will also need to have regard to the specific guidance in the Council's Planning Code in relation to bias and predetermination.

Summary of Do's and Don'ts

50) The law of ***bias and predetermination*** protects the democratic decision making process such that decisions are taken properly and conscientiously, having due regard to advice and other material in the meeting, and what it said in the relevant debate.

Do's

- Members should not be afraid of holding or expressing views, even strong views - provided that they remain just that - ***views***
- Be careful not to convey the impression in the mind of a reasonable person (and before the decision in question) that you have already made up your mind 'come what may'
- Remember that the *appearance* of bias is sufficient to undermine the decision-making process even if you believe that no bias *actually* exists

Don'ts

- In expressing your views ahead of a decision, don't use extreme language that could indicate you've ***predetermined*** the matter already
- Allow your associations and memberships to create the *impression* of bias
- Accept gifts and/or hospitality that creates the impression of bias or corruption

51) For further advice about this guidance, and to discuss any particular scenarios, contact the Monitoring Officer on 0300 0030107 or kevin.lane@cherwellandsouthnorthants.gov.uk.