Colchester City Council

# Planning Procedures Code of Practice

## A guide to how the Council determines planning applications

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# Introduction

(i) Planning matters have a significant impact on our lives and the area where we live, work or play. Consequently, planning attracts a great deal of public and media interest. It is important that the system operates, and is seen to be operated, in an honest, open and transparent manner.

(ii) The purpose of the planning system is to consider development proposals in the light of wider public interests, with the Government requiring a positive approach to be taken towards allowing sustainable development. To be successful, the planning system relies on Councillors and Officers acting in a way which is fair and is clearly seen to be fair. This includes acting in accordance with planning law in all instances, and paying due regard to national and local policies, in addition to all other “material planning considerations”.

(iii) This Code describes how the Council deals with planning applications and other planning practices. It applies to all Councillors and Officers who are involved in the Development Management and Planning Policy processes. It recognises the separate roles of Councillors and Officers.

(iv) Councillors have a special duty to their constituents, but their first duty is to the whole community of the City of Colchester. They must vote in the interests of the whole City where planning matters are concerned. Councillors, like Officers, should have regard to the law, statutory duties, national policy, the Development Plan and all other relevant material planning considerations.

(v) All Councillors are bound by the Council’s Members Code of Conduct contained in the Council’s Constitution. This Planning Procedures Code of Practice aims to complement the Members Code of Conduct. If there is any unintended disparity between this Code of Practice and the Code of Conduct, the latter will prevail. Similarly, Officers will also remain bound by the Royal Town Planning Institute Code of Conduct (as applicable).

(vi) Councillors are reminded that some breaches of this Code could amount to criminal offences; could result in judicial challenges to decisions of the Planning Committee; or could incur significant cost implications for the Council.

(vii) If you have any questions about this Code or would like further information please contact the Council's Monitoring Officer, Andrew Weavers.

## Section 1: The Role of Councillors

(1) In making decisions on any planning applications, Councillors will:

- act “reasonably”, as defined within planning law
- act honestly, fairly and openly
- approach each application on its own merits and with an open mind
- carefully weigh up all the relevant material planning considerations
- avoid undue contact with interested parties
- ensure that the reasons for any decision are clearly stated and based upon relevant material planning considerations

(2) The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the City of Colchester and act in a way which is fair and is clearly seen to be so. There is also a presumption in favour of sustainable development, and encouragement for Local Planning Authorities to take a positive approach towards planning decision making.

(3) Councillors will not give instructions to Officers, and they will not put pressure on Officers to make a particular recommendation on an application. This behaviour would amount to a Councillor using their position improperly which would constitute a breach of the Members’ Code of Conduct. Councillors can expect Officers to give them every help in answering questions on planning matters.

(4) Councillors on the Planning Committee will be free to vote on planning applications in the way they consider appropriate, that is, without a Party ‘whip’. They will also take account of all the relevant information, evidence and arguments. This will include the Development Plan and all relevant material planning considerations.

(5) In the event that the Chair of the Planning Committee is required to exercise their casting vote on an application, the Chair will exercise their vote based solely on the planning merits of the application before them and the debate on the application by the Committee.

(6) More guidance on Councillor and Officer relationships can be found in the Council's Member/Officer Protocol within the Constitution.

## Section 2: The Role of Officers

(1) In making decisions on applications, Officers will:

- give professional and impartial advice
- make sure that all the information needed for a decision to be made is provided
- put the application in context, in terms of the Development Plan and all other relevant material planning considerations
- give a balanced, clear and accurate written analysis of the issues, acknowledging the relative merits of alternative opinions or options that may exist
- wherever possible, distinguish matters of fact or law from their own professional opinions and/or judgements
- give a clear recommendation, with reasons.

(2) Officers will give professional advice and make recommendations only. The exception is if they have been given further powers under the Council's Scheme of Delegation to Officers, or when the Planning Committee gives specific delegated authority.

(3) Officers are responsible for carrying out the decisions of the Planning Committee. However, the Council endorses the Royal Town Planning Institute Code of Conduct, in particular that Officers must not make or subscribe to any statements which go against their own professional opinions.

## Section 3: Discussions with Applicants

(1) The Council encourages Officers to have meetings with prospective applicants before they make an application, and to negotiate with applicants during the consideration of a planning application. This is also encouraged within the planning system by Government, in order to help deliver new developments and growth. Usually, these meetings will only involve Officers and will be held at the Council's offices or on site, with a record of conversations being made. Due to the confidentiality of most pre-application enquiries, records will not usually be published until a planning application is subsequently made.

(2) However, Councillors will be able to participate in pre-application discussions if doing so is in accordance with the “Councillor Involvement in Pre-Application Discussions Protocol” set out in Schedule 2 of this Code. Councillors will also be allowed to participate in planning application discussions when the Planning Committee has

passed a resolution that specifies that subsequent application discussions will involve Councillors during a Committee meeting with the public present. Minutes of all such subsequent discussion meetings must then be publicly recorded on the relevant planning application file, as well as being reported fully in any resultant delegated Officer report or Planning Committee agenda.

(3) Councillors shall not meet with applicants or people acting on their behalf unless there is also a Planning Officer present. Officers will chair all meetings and they shall make it clear at each meeting that:

- only informal opinions and provisional views can be given;
- opinions shall be based on relevant planning policies and practices, as well as material planning considerations;
- no advice will bind the Planning Committee (or the Service Director if they are delegated to make the formal planning decision).
- Councillors are present to ask questions, clarify elements of proposal, or raise awareness of any local issues that their constituents may raise; and
- Councillors will not take part in any negotiation (which remains the role of the Officers.

(4) All Council representatives taking part in these discussions will make it clear that decisions on planning applications are taken either by the Councillors on the Planning Committee or (under specific circumstances) by the Service Directors, or an Officer specified under the Scheme of Delegation.

## Section 4: Informal Briefings

(1) To assist in the decision-making process, Officers will undertake informal briefings (where appropriate) to explain the relevant details of larger or more complex planning applications. These Briefings will occur following liaison between Officers from the Planning Service, Democratic Services and the Chair of the Planning Committee.

## Section 5: Lobbying

(1) It is quite common for interested parties to want to discuss a proposed development with Councillors before an application is decided. Given their roles as elected community representatives, Councillors should be free to meet with those people not associated with the planning application submission to better understand local opinion. However, to avoid compromising the probity of planning, Councillors should not meet an applicant or their appointed agent or architect in connection with a planning application on their own (i.e. without Officers being present). In all cases,

Councillors (and in particular Councillors of the Planning Committee) will:

- not make it known in advance whether they support or oppose a proposal until they have received all of the relevant information, evidence and arguments from all sides;
- not publicly express an opinion which could be taken as support for, or opposition to, a proposal by any reasonable person;
- not organise support or opposition for a proposal or lobby other Councillors (except when speaking before the Committee);
- direct lobbyists or objectors to the case officer; and
- inform the Monitoring Officer, Service Director (as appropriate) and the Chair of the Planning Committee about the existence of any lobbying interests.

(2) Councillors who are not part of the Planning Committee may express predisposed views for a particular body of opinion before the matter is considered by the Committee. Councillors of the Planning Committee must make it clear that they will not reach a final view on a proposal until all the relevant information, evidence and arguments have been put before them (which will not until after the item has been discussed in full at any later Committee meeting).

(3) A Councillor who had previously expressed a view on a particular body of opinion as referred to in Paragraph (2) above who is subsequently substituted onto the Planning Committee will not be able to speak or vote on any item that they have expressed views for in advance. This will also apply if any item is referred to full Council for a decision.

(4) Any Councillor on the Planning Committee (including substitutes) whose impartiality has been compromised by them expressing a prejudicial view on an application prior to the Committee considering the matter will need to withdraw from the decision-making process. Any Councillor who finds themselves in this position should seek advice from the Monitoring Officer.

(5) Councillors must avoid putting themselves in a position that could lead to the public thinking that they are receiving preferential treatment for themselves, friends or relatives, or for any firm or body they are connected with. The Council's Councillors Code of Conduct gives more information about this.

## Section 6: Reports to Planning Committee

(1) Committee papers should be available at least five clear working days before the meeting.

(2) All applications presented to the Planning Committee for a decision will have a full written report from Officers. This will include:

- summaries of all consultation responses;
- a clear explanation of the proposal, relevant policies, site characteristics and any related planning history;
- analysis of the material planning considerations; and
- a clear recommendation.

(3) Any relevant planning information which is received after the written report has been prepared, but more than 48 hours before the Planning Committee meeting will be presented to the Committee in writing on an “amendment sheet”. New information received within 48 hours of the Committee meetings will be summarised verbally by Officers in any presentation given at the meeting. Information received after 4pm on the day of the Committee meeting, the specified cut off time, will not be presented to the Committee.

(4) If the circumstances of an application change between the preparation of the report and its discussion by the Planning Committee, the Service Director may remove any item from the agenda of the meeting or recommend that the Committee defers the item. Officers will then make reasonable efforts to inform all known interested parties.

(5) If an application is decided in the way an officer’s report recommends, the decision will be worded as within the report, subject to any amendments set out in the resolution agreed.

(6) If Councillors disagree with Officers’ professional advice, then material planning reasons for rejecting this advice must be given as part of a motion to overturn the recommendation. In this situation, senior Officers will be requested to advise Councillors of any implications on such a decision. The “Deferral” & “Recommendation Overturn” Procedures (DROP) should then be followed as set out in Schedule 3 of this Code. The Chair should follow these procedures prior to any vote being taken. Councillors must be aware that they are required to take “reasonable” decisions as defined by planning law, in accordance with material planning considerations, and that they may have to justify their decision at any appeal and may be held accountable by local residents.

(7) Applicants and third parties will be entitled to speak at the meeting, as allowed by the Council’s “Have your Say” planning procedures as set out within the Planning Committee Procedure Rules (along with more information about the rules during Planning Committee meetings).

(8) There will be an Officer from the Council’s Corporate Governance Team at all meetings to make sure that procedures are properly followed.

## Section 7: Disclosure of Interests by Councillors

(1) The law and the Council's Councillors Code of Conduct set out rules and guidance for Councillors on declaring their interests. Councillors must follow these rules and guidance and also review their own situation regularly. Under the Council's Code of Conduct impropriety must be avoided, and also any appearance of or grounds for suspicion of improper conduct. Where there is the possibility of an allegation of bias or predetermination, Councillors must seek advice from the Monitoring Officer.

(2) Councillors who are unsure whether an interest should be declared must seek the advice of the Monitoring Officer, or the Democratic Services Officer at the meeting.

(3) Councillors are discouraged from receiving hospitality from people with an interest in a planning proposal. In accordance with the Council's Member Code of Conduct Councillors are required to register any gift or hospitality over the value of £50, or cumulative smaller gifts and hospitality combining to the same value, on their Notice of Registerable Interest within 28 days of its receipt and declare the nature and existence of the gift and hospitality at the relevant Committee meeting for a period of 3 years from the date of receipt.

(4) Any Councillor on the Planning Committee who has expressed a prejudicial view on an application will not participate in the determination of that application nor remain in the Committee Meeting room at any time whilst the item is discussed (other than during the "Have Your Say" procedures). If they do not wish to make representations in accordance with the Council's Member Code of Conduct, then they will leave the room for the duration of the discussion and vote on the application. If they wish to make representations, they may do so as a visiting ward member (provided they are an eligible ward member) or from the public gallery in other instances (only if the public are so entitled) and must leave the room once they have finished their representations or the Committee decides that they have finished. They must not remain in the room when the vote is taken on the application.

(5) If a Councillor has acted in such a manner as to give rise to an allegation of bias or predetermination, they must seek advice from the Monitoring Officer prior to seeking to make any representations or participation at Planning Committee.

## Section 8: Disclosure of Interests by Officers

(1) If an officer has an interest in any planning matter, then they must declare this to their Service Director/Manager in writing. This is recorded on the relevant application file and they must take no part in the processing of the particular matter.

(2) No officer will, when exercising a power granted by the Scheme of Delegation to Officers, exercise that power in the case of an application where they have been responsible for writing the report and making the recommendation to the Planning Committee. In these circumstances the officer will refer the case to another officer for advice.

(3) No Planning Officer will act as the Case Officer on any planning application within a radius of 500m of their own property.

(4) Officers are discouraged from receiving hospitality from people with an interest in a planning proposal. If this is unavoidable, Officers will declare its receipt, as soon as possible, in the relevant register of gifts and hospitality. Any concerns in this regard must be raised with the Monitoring Officer.

## Section 9: Applications Submitted by Councillors or Officers

(1) All applications which are submitted by or on behalf of Councillors, or by former Councillors (within the last 6 months) or Honorary Aldermen, or by Officers (either currently employed or employed within the last 6 months by the Council), will be reported to Nominated Officer and Nominated Member for a decision as to whether the application will be referred to Planning Committee, wherever this becomes apparent. The Monitoring Officer will be informed of all such applications as soon as it becomes apparent to the Planning Service, however individual Councillors or Officers of the Council are responsible for informing the Planning Service (it is advised that they should also inform the Monitoring Officer themselves too).

(2) The Councillor (in accordance with the Councillor's Code of Conduct) or Officer concerned will take no part in the decision-making processes of the application other than in using the Have Your Say opportunity in accordance with the Planning Committee Procedure Rules.

(3) Where Councillors or Officers have any potentially prejudicial interest in an application, or any interests that may be perceived by others to be of concern to the integrity of the Council and its decision-making procedures on planning applications, that Councillor or Officer should discuss this with the Monitoring Officer at the earliest possible opportunity. The interest should be recorded, and they should take no part in the decision-making procedures (unless otherwise advised by the Monitoring Officer, based upon the individual circumstances of their perceived interests). Councillors and Officers with such interests will still be entitled to use the Have Your Say provisions at the Planning Committee in accordance with the Planning Committee Procedure Rules (in the same manner that any member of the public may do so).

## Section 10: Training

(1) All Councillors must receive training in planning procedures. The subjects covered by the training will be decided by Officers in consultation with Councillors. A Councillor who does not undertake this training will be disqualified from the Planning Committee and from being a substitute for Councillors of the Committee who are unable to

attend. They will also be disqualified from taking part in deciding an application referred to full council. They will also be unable to participate in any pre-application or planning application meetings that include the developer, applicant(s) or their agent(s).

(2) A programme of training will be available each year, covering issues of current importance as well as updating knowledge. From time to time, specialist training will be provided to cover particular topics or to look at matters in greater depth.

## Section 11: Complaints and Compliments

(1) Complaints and compliments about the Council's development management process will be dealt with under the Council's corporate complaints and compliments procedure.

## Section 12: Review of this Code of Practice

(1) This Code will be reviewed regularly to make sure that it reflects changes in the law, the Council's structure or other relevant considerations.

## Schedule 1: Planning Committee Site Visit Protocol

### The Planning Committee's Site Visits

(1) All sites are visited, investigated and considered by Officers as part of the normal process of determining applications. The results of these investigations will be reported to the Committee in the written report on the applications. Site plans and photographs are also provided to the Planning Committee during their meetings. This information should normally be sufficient for Councillors to be able to make a decision on the applications.

(2) However, there may be occasions when Councillors may want to visit specific sites to view specific characteristics in person (e.g. the relationship of a proposed large development to the wider surrounding area). Councillors of the Planning Committee requesting site visits should specify the reasons for the site visit and offer particular issues they want to look at on site.

(3) A formal site visit will be held where it is clear there will be benefits from holding one, or if the Planning Committee asks for a site visit. A record will be kept of why visits are being held and who attended.

(4) The only people invited to the site visit are Councillors of the Planning Committee and Officers of the Council. Whilst other parties may be present, no one other than the Chair, Councillors of the Committee and Officers may address the Committee on a site visit.

(5) The applicant and any other parties who are present at the site visit as a result of publicity (e.g. Ward Councillors, neighbours or objectors) will not be permitted to participate in the site visit, discussions or speak directly to Councillors of the Committee.

(6) If access to private land is needed, Officers will get the agreement of the landowner before the visit.

(7) On assembling at the site, the Chair will advise those present of the purpose of the site visit and the procedure to be followed, so that all are aware that it is a fact-finding exercise only and that no decision will be taken until the Planning Committee meeting.

(8) There must be no discussion of the merits of the case. Questions should not be put directly to the applicant or to any other people present. In the event that further discussion between Officers and the applicant/others present proves necessary in order to answer Councillor's questions on factual matters, the Chair may decide on a brief adjournment of the meeting to facilitate this process.

(9) The visiting party will stay together as a group. No lobbying by applicants or objectors will be allowed and the public has no right to be in attendance. If an applicant or group persists in attempting to lobby, all Councillors and Officers will leave the site and the site visit will be abandoned.

(10) When Councillors on the Planning Committee are on site visits, they must not make any comments that could give the impression that they had already formed a view on the merits of the application. No decision on the application will be made until a formal meeting of the Planning Committee, where Councillors will have before them all necessary information to be able to make an informed decision. This will include a record of the site visit.

**Site Visits by Individual Councillors on the Committee**

(1) Councillors are strongly discouraged from visiting sites on their own; however if undertaken, Councillors should:

- only attend sites within their own wards, in their Ward Councillor role;
- make it clear that they will listen to all sides, not just one party;
- offer equal time to all parties for and against a proposal;
- not commit themselves to one side or another;
- keep their own record of discussions; and
- always declare their visits to the Planning Committee before the item is considered.

(2) Councillors need to be aware that lobbying or expressing their opinions could prejudice their opportunity to vote at any Committee meeting where a planning application is considered. Councillors may want to seek advice from the Monitoring Officer before making unaccompanied site visits.

(3) Any Councillor that does undertake a site visit on their own will not be acting as part of the Local Planning Authority and so will have no rights of access to any private land.

(4) The note of any visit to a site outside of the Planning Committee must be passed to Officers immediately and will be recorded on the planning application file.

# Schedule 2: Councillor Involvement in Pre-Application Discussions Protocol

## Why This Protocol is Necessary

(1) The Government encourages Local Planning Authorities to take a proactive approach towards pre-application discussions. The Council is committed to providing a high quality Development Management service for local communities, inward investors, developers, other statutory bodies and infrastructure providers, in order to promote high quality, sustainable development. The Development Management approach encourages Councillors to be involved in pre-application discussions to act as champions of their communities but, where applicable, without prejudicing their role as decision makers.

(2) Several legal decisions have drawn the line between legitimate predisposition and unlawful predetermination. Three cases in particular, illustrated a shift towards increased pragmatism in this area:

- R (Island Farm Development Ltd) v Bridgend County Borough Council [2006] EWHC 2189 (Admin) [2007] LGR 60
- Condron v National Assembly for Wales [2006] EWCA Civ 1573 [2007] LGR 87
- R (Linda Ware) v Neath Port Talbot Council & National Grid [2007] EWHC 913 (Admin)

(3) However, they also reveal continuing conceptual uncertainty at the heart of the law in this area. Concerns about poor practices within local authorities have often been based on the issue of lobbying. Councillors, especially Councillors of the Planning Committee, need to avoid bias and predetermination to account for the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. This is a challenging frontier, but one that can reap huge benefits if undertaken in a proper manner. It is critical not only that proper procedures exist and are followed, but that they are perceived by all as being fair and reasonable. Care and common sense must be exercised by all parties involved.

(4) The purpose of this protocol is to provide clear guidance to ensure that Councillors can take part in discussions on development proposals when options are being scoped and plans shaped, without prejudicing their decisions or compromising the integrity of the process.

## Involvement in Pre-Application Discussions

(1) The default position is that all pre-application discussions are treated as private and confidential for a variety of reasons, including that they may be speculative, affect unknowing employees, or even involve land transactions where publicity could affect viability. Consequently, there are significant considerations in broadening the audience on pre-application discussions with regard to the public awareness that may arise. To safeguard Councillors, upon initial receipt of a major pre-application proposal the Planning Service shall contact the applicant to request their consent to engage Councillors in the early planning process. This request will make clear that such schemes will need to be distributed more widely and may raise more public awareness, however there are also significant benefits for them to consider too.

(2) The agreement of the developer to include Councillors in early pre-application discussions will always be necessary. Where developers agree, the plans shall be made available for Councillors to inspect. The applicant shall then be invited to attend a meeting to discuss the proposal at a formal meeting convened for such purposes. Only “major” development shall be eligible to pre-application meetings. Minor proposals will continue to be undertaken by Officers.

(3) For the purposes of Councillor engagement; the definition of “major” development shall be:

- ten (10) or more residential dwelling units;
- any residential site area exceeding 0.5 hectares where it is not known how many dwellings are to be created;
- new non-residential buildings over 1,000m$^2$ in floorspace or 1 hectare of land;
- a change of use over 1,000m$^2$ in floorspace or 1 hectare of land; or
- Any other development site area that is 1 hectare or more.

(4) Councillor engagement meetings will be arranged to ensure that developments evolve through genuine discussion with Councillors at the earliest opportunity; however, before any Councillor involvement it is necessary that any major pre-application proposal will have first been considered by the Council’s Corporate Development Team. This is to ensure that the Officer can give accurate advice regarding any financial considerations to Councillors based upon the Corporate Development Team analysis.

(5) The Corporate Development Team is responsible for setting out any s106 requirements and no planning obligation should be requested outside of this process.

(6) Should Councillors wish the Corporate Development Team to reconsider any suggested contributions to be sought then the proposal would return to the Corporate Development Team for reconsideration.

## Invitations to Councillors

(1) In all cases, the Ward Councillor(s) will be invited to pre-application meetings that take place. In addition, invitations will also be sent to Councillors from other wards that are likely to be affected by a development (e.g., neighbouring wards where development is close to ward boundaries, or where the traffic implications are through neighbouring wards). The identification of the affected wards will be completed by Officers based on material planning considerations. Their recommendations for invitation will then be authorised by the Service Director.

(2) Likewise, any other Councillors will only be invited at the discretion of the relevant Service Director and the reasons for allowing them to engage in a pre-application proposal shall be recorded on file.

(3) All Councillors attending pre-application discussions must have first attended a training session on conduct at pre-application discussions. These training sessions will be organised by the Planning Service on a regular basis in order to ensure that the integrity of the Councillor's decision-making role is maintained. No Councillor engaging in pre-application discussions should go more than 24 months without at least attending a "refreshment training session".

## Pre-Application Meetings

(1) Councillors should only attend those meetings organised in accordance with this protocol and must not attend private meetings with developers. The meeting will be conducted during office hours except in exceptional circumstances. It shall be arranged by Officers who shall accommodate, as far as reasonably practical, the availability of Councillors. However, availability shall not be a reason to delay the pre-application -discussion phase.

(2) In the interests of transparency, consistency and fairness to all, the meetings shall follow a firm structure, as follows:

- The Planning Officer will act as Chair for the meeting, introducing participants and setting out the purpose of the meeting to advise how it will be conducted;
- The developer will present their proposal;
- Councillors will then have the opportunity to ask questions and seek clarification. They may alert the developer to what they perceive as the likely views of their constituents, but care will need to be taken that their own personal views are not expressed;
- The Chair will then thank the developer for attending and the developer shall leave the meeting;
- Once the developer has left the meeting Councillors may advise Officers of any other matters they wish to be explored further and any elements which they feel would benefit from negotiation;
- Officers will then offer a professional opinion to guide Councillors as to what negotiations would be reasonable and how the proposals align with policy; and
- The Chair will then conclude the meeting.

(3) The Chair will make it clear to the developer that the role of the Councillor is to listen to the discussion, identify issues that the developer will need to consider and to represent community interests but that it will not be possible for any Councillor to enter into negotiations or express a view on the proposal.

(4) The Chair will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on the public file at the earliest opportunity. In all cases, the involvement of Councillors will be recorded in any subsequent planning application, whether in any delegated report or in any Committee report.

(5) Negotiations will take place after the meeting and will only be undertaken by professional Officers.

(6) In the case of potentially contentious meetings, 2 or more Officers will attend. For certain major, complex proposals it may be necessary to have more than one Councillor meeting and, to this end, a schedule of involvement will be agreed with the developers by Officers.

**Councillor Disagreement with Officers**

(1) Planning decisions are usually balanced upon interpretation of various policies and contextual circumstances and opinions can often vary on the weight to be given to different factors. It is critical to the openness and transparency of the Planning Service that mutual trust between Councillors and their Officers is demonstrated, and that each understands the others role.

(2) The Local Planning Authority has a duty under section 38(c) of the Planning and Compulsory Purchase Act 2004 (and within the National Planning Policy Framework) to determine applications in accordance with the Development Plan (adopted policy) unless material planning considerations indicate otherwise. Whilst Councillors may interpret policies differently, and are perfectly entitled to reach a different conclusion on the weight to be given to the material considerations, their argument must be considered “reasonable” as defined within planning law. Councillors must not seek to influence the Officers’ professional assessment of any proposal. If the interpretations differ, Officers will continue to lead discussions and the Councillor will have their opportunity to put across their opinion during the usual Planning Committee procedures.

## Schedule 3: “Deferral” & “Recommendation Overturn” Procedures (DROP)

### Introduction

(1) Whilst it is common for Councillors to agree with their Officers, occasionally Councillors do not agree with Officer recommendations put to the Planning Committee. This is perfectly natural, as much of planning can be a matter of balancing different issues, based on judgements as to what level of weighting should be afforded to those issues. Usually, as such items are heard and discussed by the Planning Committee it becomes apparent from the debate that there remains varying levels of discomfort with the Officer’s recommendation (whether that be in a more positive or negative direction). In such cases the Committee are not duty bound to determine the application as it has been put before them by Officers. The Planning Committee has a choice to defer an item and instruct further work be undertaken to resolve particular issues, or to overturn the Officer recommendation if they believe this is incorrect.

### When Should a “Deferral” be Used?

(1) Most commonly, the Officer recommendations will be accepted by the Committee. However, in instances where the Committee agree in principle with the recommendation but feel that there remain areas for improvement or clarification the Committee can request further work be undertaken before they make a decision. This request can be made via a deferral of the item.

(2) The Committee may defer an item when they require further information in order to make an informed decision. The law is clear that planning decisions should not be taken unless all of the necessary facts are known, and therefore a deferral would be the appropriate action in these instances. If making a specific amendment to a scheme or providing additional information may help make a scheme acceptable this should be considered before refusing the application.

(3) When the Planning Committee makes a motion to defer an item it should be made with clear instructions as to the purpose of the deferral, including clarification on exactly what is being required by the Committee. The Committee should also state what should happen next in both the event that the request is met in full, or if the request cannot be met. Options include deferring with the item to come back to Committee regardless of outcome or deferring and delegating power to Officers later approve the application if the request is satisfied, or refusing the item if the request is not met. Usually, the item would be expected to return to Committee unless the requirements are very clear. Where there is a requirement to seek clarification then it will usually be essential that the item returns to the Committee to further consider this additional evidence.

(4) A deferral is a long-established procedure and fairly commonplace. However, where matters are more complex it may not be possible to resolve them at all, or via a deferral of the current application, in which case Councillors may wish to make a contrary decision to that recommended.

**Recommendation "Overturns"**

(1) Where Councillors decide that they disagree with the recommendations from Officers the Committee is perfectly entitled to make a contrary motion to "overturn" the recommendation. In such circumstances the Committee remains bound by law to make decisions in accordance with the Development Plan and all other material planning considerations. Therefore, the Committee will need to demonstrate that this requirement has been met in its deliberations, explaining what material considerations have made them reach their decision contrary to professional advice.

(2) As planning it is a matter of weighting considerations in reaching a decision whether planning permission should be granted different people can reach different conclusions. Provided these conclusions remain "reasonable" there should be limited risk to the Council. However, there are varying levels of risk that can arise including general maladministration, creating grounds for legal challenge and "unreasonable behaviour" likely to result in an award of costs against the Council (in the event of an appeal, or complaints to the Local Government Ombudsman). The decision may also undermine the Council's own Development Plan policies, or possibly set a precedent that would then be hard to ignore in making consistent decisions on planning applications of a similar nature thereafter.

(3) Adhering to this procedure for "overturning" recommendations is intended to safeguard the Council and limit risks before such a decision is taken.

**The Procedure for "Overturning" Recommendations**

(1) When the Planning Committee disagrees with their professional Planning Officer's advice the Councillors can raise a motion to overturn the recommendation. This motion should include clearly stated planning reasons so that other Councillors of the Committee can decide whether they agree or disagree. The reasons should be "reasonable" as defined within planning law, and should explain how the Development Plan and other material considerations have been taken into account to justify the motion. Once the mover of the motion has stated their reasons for suggesting the Committee act contrary to the Officer's recommendation this motion must still be seconded. The seconder should also set out their own analysis of the Development Plan and other material planning considerations so that they can again demonstrate their own "reasonableness" in the decision-making process.

(2) At this point a valid motion will have been made and usually a vote would be required on this motion. However, before taking any vote to overturn an Officer recommendation the Chair should first seek a response from Officers. Wherever possible the advising Officer(s) will give their professional advice on the implications so that these can be considered by the Committee before any vote. The advice given may contain an opinion on the strengths of the motion if appealed, or legal considerations (highlighting any risks). Any debate on this advice should also take place prior to any vote being taken and the Chair will be responsible for seeking any clarity required.

(3) However, there will be instances when Officers feel unable to give comprehensive advice without further research or legal advice. In these instances, the item should be deferred to a further meeting and no vote should take place at the meeting.

(4) Where Officers feel that there is limited risk and the Chair believes that there are reasonable planning grounds for overturning the Officer's recommendation then the motion can be voted upon immediately so that a decision is made. However, Officers should always be given the opportunity to explain the implications of what has been proposed to the Planning Committee in public before any vote is taken.

(5) Where the Officers are unable to quantify the level of risk and the Chair believes that a contrary decision to the Officer recommendation contains weaknesses or uncertainty about the implications without more time to investigate, then the Chair should defer the vote for an additional risk report to be returned to a later meeting. The Chair can take this decision on their own or, if they choose not to take it alone, through a vote whether or not to delay the decision for a report on the risk analysis. In either method, the decision whether or not to defer the item must always be taken prior to any vote to overturn the Officer recommendation. If a formal risk analysis is required the item will be deferred with no vote on the merits of the case, if not then the vote can proceed on the original motion to overturn the Officer's recommendation at this time.

(6) The ability to delay the vote to a later meeting informed by a report on the implications protects the Council, providing both Officers and Councillors time to reflect on the issues. This procedure allows Officers an opportunity to write a supplementary report focusing only on the proposed motion, highlighting any implications (whether positive or negative) of overturning the recommendation. This may highlight whether there is evidence to support a contrary decision if challenged, identify similar case law or appeals, or seek legal advice that may help Councillors vote. It would also give a more appropriate amount of time to consider any specific wording of conditions or the reasons for refusal based upon the indicated wishes of the Planning Committee, so that Councillors can consider if these deliver their intentions as envisaged.

(7) On complex or controversial cases where an overturn has been suggested, it will be expected that the final decision on the application merits will usually be deferred until a report on the implications has been discussed at a later meeting of the Committee (provided it does not prevent a final decision within a reasonable timescale) to ensure that Officers can provide appropriate advice as to the appropriateness of the reasons suggested for approval (including recommending suitable planning conditions) or refusal (including the exact wording within the reasons for refusal) of the application.

**Subsequent Risk Report and Committee Meetings**

(1) Importantly, the risk analysis report should be focused solely on the motion to overturn the recommendation, relating to the risks and implications as opposed to introducing any new material on the general issues/merits of the case previously discussed. Consequently, when the report on the implications of the suggested overturn is considered, it is not envisaged that there would normally be a need for additional public speaking (as the original debate will have considered the issues and a motion remains in place from the previous meeting). However, this does not preclude the Committee from voting against that motion once they have considered the risks and implications if they then consider the motion would be “unreasonable.”

(2) In all cases, there will be full and accurate minuting of resolutions with a careful record being kept of the debate when a resolution is proposed which is contrary to an officer recommendation. In such cases the Chair will summarise, or ask the Officers to summarise, the salient points of the debate and ensure the text of the proposition is clearly understood before putting the matter to the vote.

(3) When any report on the implications of an “overturn” returns to the Committee it shall set out the Officers’ interpretation of the detailed formal wording proposed for the decision notice. This wording must be based on the reasons given by the Committee. However, Officers will be allowed to add relevant policies and set out the exact wording to best communicate the intentions of the Committee. This would be set out in the report.

(4) Councillors may decide to modify the motion should they wish to amend their reasons for their decision when the focused report returns to a subsequent meeting. This will be formally recorded in the minutes of the meeting to provide transparency alongside the justification for departing from Officers’ recommendations which must also be given in public so that the justification is not subject to later interpretation.

(5) The Courts have expressed the legal requirement that reasons should be clear and convincing. Where Councillors reach a decision contrary to an Officer recommendation their reasons must be substantiated by evidence and founded on reasonable planning grounds. Where a decision is taken to refuse an application, the Committee must consider whether any conditions could have allowed the development to have proceeded. In addition, Councillors should exercise caution to giving undue weight to any particular consideration.

(6) The procedure for overturning Officer recommendations is set out more simplistically in the flowchart overleaf:

## "Deferral" & "Recommendation Overturn" Procedures (DROP) Flowchart

*If Councillors require more information, or minor amendments to be explored, then the item should be deferred.*

*If no more information or amendment is desired Councillors will proceed to propose a motion.*

