

HAMPSHIRE COUNTY COUNCIL**Decision Report**

Decision Maker:	Regulatory Committee
Date:	8 January 2014
Title:	Local Protocol on Planning, Rights of Way and Commons Registration for Councillors and Officers
Reference:	5512
Report From:	Director of Economy, Transport and Environment, Director of Culture, Communities and Business Services and Director of Corporate Services – Policy and Governance

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1. Executive Summary

- 1.1. In 2003 the County Council approved a Local Code of Conduct for Councillors and Officers dealing with planning matters which was supplemented by a Local Protocol for Elected Members involved in the consideration of planning matters. These documents were reviewed, which resulted in the production of a revised Local Protocol on Planning for Councillors and Officers in 2010.
- 1.2. The Regulatory Committee considered this revised Local Protocol on Planning for Councillors and Officers at its meetings on 18 March 2010 and November 2012. The Committee resolved to approve the revised Local Protocol and recommend to the County Council that it be adopted for use. It was also resolved that Standing Order 12 be amended to allow the Regulatory Committee to ask questions of clarification and fact of persons making deputations to the Committee including the local County Councillor when making deputations.
- 1.3. Due to the uncertainty concerning proposed government changes to planning procedures leading up to the Localism Act 2011, the Local Protocol was not taken forward to the Standards Committee or the County Council before the County Council elections in May 2013. It is now intended to take it to the

County Council but in view of the time that has elapsed, and as there are proposed minor amendments, including broadening the protocol to take into account Rights of Way and Commons Registration matters which are also considered by the Committee, it is considered that the Committee should be asked to confirm approval to the revised protocol. The proposed revised Local Protocol is attached as Appendix 1.

- 1.4. The recommendation is for the Committee to confirm approval, and recommend to the County Council that the Local Protocol on Planning, Rights of Way and Commons Registration for Councillors and Officers be adopted.

2. Changes in the revised local protocol

- 2.1. Some of the changes in the revised Local protocol highlighted in the previous report were;

- (i) deputation procedure – Members will recall that on 18 April 2007 the Committee decided to pilot a scheme under which questions of clarification and fact could be asked of those persons making deputations and also the Local County Councillor who made a deputation. The Committee has found that having the ability to ask such questions of deputees has been of assistance to them in determining applications and the pilot scheme has been extended to date. It would be appropriate to put this pilot scheme on a more permanent formal basis and this can be done by an amendment to the relevant County Council Standing Order 12 relating to Deputations. It is therefore proposed that the Committee recommend to the County Council that an amendment to Standing Order 12 be made to enable the Regulatory Committee to continue to ask question of deputees as per the pilot scheme, and other provisions in respect of representations by Officers in a personal capacity, or on behalf of the Council in its capacity as applicant or landowner.
- (ii) site inspections – the Committee’s current practice is that only members of the Regulatory Committee, officers and the Local County Councillor attend site inspections. This differs from previous practice where in effect anyone could attend. It had been recognised that the previous practice had the potential to compromise the position of Members attending the site inspection as they could be drawn into what might be perceived as a private conversation with, for example, an applicant. The fact that a site inspection is restricted to Members does not preclude members of the public from making representations directly to the Committee in relation to a planning application, but this should be done as part of the deputation procedure so that any debate is in public. Moreover, the changes in the deputation process enable relevant questions of clarification and fact to be asked of deputees, which might otherwise have been asked at a site inspection.

- (iii) procedure when decisions are made against officer recommendation – in the light of decisions made by the Committee against officer recommendation, the opportunity has been taken to clarify how the Committee will deal with such a situation in Committee and how the County Council will approach any appeal.

2.2. Some additional changes are now also proposed in this revised draft protocol. These are;

- (i) that there will be an agenda management briefing by officers for the Chairman and Vice Chairman, which will normally be 3 days before the meeting;
- (ii) as the Regulatory Committee considers both Planning matters and Rights of Way and Commons Registration matters at the same meeting the protocol has been widened to include these matters as well;
- (iii) at present there is no time restriction for County Councillors addressing the committee. The proposal is to introduce a 10 minute time limit. This is to improve the time management for the Committee, and to be consistent with the protocol for other County Council meetings;
- (iv) the intention is that the Local Protocol for the Regulatory Committee will form part of the County Council's suite of standards and consequently will be formatted appropriately when considered by the County Council;
- (v) the effect of the Localism Act 2011 was to introduce interests defined as "disclosable pecuniary interests". These interests have a statutory basis and replace the former concepts of "personal interests" and "prejudicial interests". The Protocol has been drafted to accommodate this change in the law.

3. Recommendation

3.1. That the Regulatory Committee approves the revised Local Protocol on Planning for Councillors and Officers and recommend that it be adopted for use by the County Council.

CORPORATE OR LEGAL INFORMATION:

Links to the Corporate Strategy

This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because of the requirements of the Localism Act 2011 and for the good governance of the County Council.

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

None

Hampshire County Council

Local Protocol on Planning, Rights of Way and Commons Registration for Members of Regulatory Committee A and Officers

1. General Role and Conduct of Members and Officers

- 1.1 The public is entitled to expect the highest standards of conduct and probity by all persons holding public office and in particular to be satisfied that when dealing with regulatory matters only relevant considerations are taken into account. There are statutory provisions and codes which set standards that must be followed if the public perception of the integrity of public service is to be maintained.
- 1.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. Applications to register new town or village greens will be determined in accordance with the Commons Act 2006; accompanying principal and secondary legislation; and supporting case law. Matters relating to rights of way will be determined in accordance relevant principal and secondary legislation and supporting case law.
- 1.3 Whilst this Local Protocol ('the Protocol') deals primarily with regulatory matters (which for the purposes of this Local Protocol included planning, rights of way and commons registration applications), the principles apply equally to consideration of local development documents and briefs, enforcement cases and all other planning, rights of way and commons registration matters. Although specific references are made throughout the Protocol to the Regulatory Committee ('the Committee'), the Protocol applies equally to all sub-committees, panels and meetings of the County Council when exercising regulatory functions. For the avoidance of doubt, this Protocol applies equally to Members of the Committee as well as Substitute Members to the Committee as provided for in the County Council's ('the Council') Constitution.
- 1.4 All Members are reminded that they are required to comply with the provisions of the Members' Code of Conduct or any successor document.
- 1.5 Officers involved in the processing and determination of regulatory matters must also act in accordance with the County Council's Officers' Code of Conduct, in respect of planning matters, with the relevant sections of the Royal Town Planning Institute's Code of Professional Conduct, or any successor documents.
- 1.6 This Protocol is supplemental to the provisions referred to above (and also supplemental to other relevant legislation) and provides further specific advice and guidance for Members and Officers involved in planning matters. The overriding principle is that Members should not favour any individual or groups and must represent their constituents as a body and vote in the interests of the County as a whole. Whilst Members should take account of all views expressed, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

- 1.7 Officers must always act impartially. The Council will review, on a regular basis, the restrictions adopted on outside activities under the Local Government and Housing Act 1989 under which private work and interests are declarable.
- 2. Registration and Disclosure of Disclosable Pecuniary Interests, Non-Pecuniary Interests, and Gifts and Hospitality.**
- 2.1 Members should observe the requirements in respect of the registration and disclosure of Disclosable Pecuniary Interests set out at Part 3 of the Members' Code of Conduct.
- 2.2 Members should observe the requirements in respect of the registration and disclosure of Non Pecuniary Interests set out at Part 5 of the Members' Code of Conduct.
- 2.3 Members should observe the requirements in respect of the registration of gifts and hospitality set out at Part 4 of the Members' Code of Conduct.
- 2.4 Officers should observe the requirements in respect of the acceptance and registration of gifts and hospitality set out at Paragraph 12 of the Officers Code of Conduct.
- 2.5 Members and Officers should as a general premise not accept gifts or hospitality. If, however, a degree of hospitality is unavoidable, it should be ensured that this is of the minimum and its receipt is declared as soon as possible.
- 2.6 County Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, should avoid serving on the Committee.
- 2.7 To avoid undue delay at a meeting and to ensure that any interest is properly considered, Members of the Committee who are unsure whether an interest is a Disclosable Pecuniary Interest or should otherwise be declared, shall seek advice from the Legal Adviser to the Committee or the Monitoring Officer as soon as the issue becomes apparent and, if possible, at least three days before the meeting at which the matter is being discussed. The final decision on the nature of any interest rests with that Member.
- 2.8 The guiding rule is that a Member should not use his/her position to further a private or personal interest, rather than the general public interest, or give the impression this is the case.
- 2.9 The responsibility for declaring any interest lies with the individual Member.
- 3. Bias, predetermination and predisposition; 'dual hatted' members**
- 3.1 Bias**
- 3.3 With regard to bias, the question is "would a fair-minded observer, knowing the background, consider that there was a real possibility of bias arising from a particular councillor being a member of the relevant decision-making body?"; and "whether from the point of view of the fair-minded and informed observer, there was a real possibility that the Regulatory Committee or some of its members were biased in the sense of approaching the decision with a closed mind and without impartial consideration of the relevant issues".

3.4 Pre-determination

3.5 Section 25 of the Localism Act 2011 came into force on 15 January 2012 and clarifies the legal concept of pre-determination. Section 25 of the Localism Act applies to all Members. Pre-determination occurs when a Member's mind is closed to the merits of any arguments which differ from his/her own about a particular issue on which the Member is making a decision. It is objectively determined. Pre-determination is likely to be evidenced by previous statements by the Member either at meetings or in the Press, that he/she is determinedly for or against a proposal, that they have reached a decision, and nothing will change their mind. **Members of the Committee with bias or who have pre-determined a matter should not participate at all in the decision-making process, as if they do there is a strong risk that the decision will be vulnerable to challenge by way of judicial review and possibly quashed. So long as a Member approaches decision making with an open mind, having regard to all the material facts and remains open to the possibility that however unlikely he/she may hear arguments during debate that might change his/her mind about how he/she intends to vote, such Member will not be held to have pre-determined an issue.**

3.6 Pre-disposition

3.7 However, Members of the Committee are not precluded from expressing views favourable to or against matters that are likely to come before them for a decision at Committee, but in order to avoid the claim that they have pre-determined the matter they should qualify any comments they make, with the statement that, those (favourable or otherwise) views are not their fixed or final views and that they will make their final decision taking into consideration all the information presented to them in the form of Officer Reports, deputations, questioning of deputations and Officers, and debate at the Committee meeting.

3.8 'Dual-hatted' members

3.9 Members of the Committee who are both Members of a district council and the Council may sometimes be faced with taking a decision on the same matter at both tiers. This does not preclude them from making decisions at both tiers as long as, at whichever meeting deals with the matter first, they make it clear that any decision is being made on the basis of the information before them at that meeting and any subsequent decision will be made on the basis of the information before that subsequent meeting. However, depending on the significance of the decision in question, Members may sometimes consider it preferable to abstain from decision-making at one tier or the other. Members who find themselves in this position are advised to declare any such involvement at the relevant time during the Committee meeting. Members who are unsure of their position should seek advice from the Legal Adviser at the meeting or the Monitoring Officer although any final decision as to whether a Member should form part of decision making by the Committee rests with the individual Member.

4. Training

4.1 Whilst seminars are held after the Council elections to give guidance to Members on the declaration of interests and any other issues in the Members' Code of Conduct, Members will receive additional specialised training in relation to planning, rights of way and commons registration legislation, policy and procedures, the development plan and the practical operation of this Protocol.

- 4.2 Members appointed to the Committee must demonstrate a commitment to being trained.
- 4.3 All Members of the Committee will receive basic training in planning law, procedure and policy. This training will be provided both in the form of events arranged for the Committee as a whole and individual coaching arranged at the request of a Member. Every four years, after the Council elections, a special event will be arranged to ensure that all Members of the Committee have had the basic training as soon as possible.
- 4.4 Members shall obtain such refresher training in planning, rights of way and commons registration law, policy and procedure as is considered necessary by the Director of Economy, Transport and Environment, Director of Culture Community and Business Services, Legal Adviser or Monitoring Officer. The Committee will consider whether the significance of any failure to attend a sequence of training events warrants exclusion from the final decision-making process.
- 4.5 The “annual tours” for Members are a key feature in developing an understanding and appreciation of the complex issues that surround planning development control and provide the opportunity for Members to judge for themselves if the impacts of the development that they had envisaged when coming to a decision have been borne out in practice. All Members of the Committee will normally be expected to attend these annual tours.

5. Development, modification or registration proposals submitted by County Councillors and Officers, and Council Development

- 5.1 Serving County Councillors and Officers should never act as agents for individuals (including a company, group or body) pursuing a planning, rights of way or commons registration matter. If County Councillors or Officers submit their own proposal to the Council, they should take no part in its processing. The County Council's Monitoring Officer should be informed of all such proposals as soon as they are submitted.
- 5.2 Proposals submitted by County Councillors and Officers should be reported to the Committee as main items and not dealt with by Officers under delegated powers. As part of the report the Officers (or such other person as may be appointed to take on this role) should confirm that the application has been processed normally.
- 5.3 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with guidance given in Circular 19/92. This Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications and that they should be determined against the same policy background (i.e. the development plan and any other material planning considerations). Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is permitted. It is important that the Committee is seen to be treating such applications on an equal footing with all other applications, as well as actually doing so.

6. Lobbying of and by County Councillors and attendance at public meetings

- 6.1 If County Councillors are to undertake fully their constituency roles it is inevitable that they will be subject to lobbying on regulatory matters and specific applications. It is essential to maintain the Council's and the Councillor's own integrity and the public perception of the regulatory process when Councillors are lobbied. Councillors should not, therefore, favour or appear to favour, any person, company, group or locality.
- 6.2 Taking account of the need to make decisions impartially and only after having heard all the relevant evidence and arguments at Committee, Members should not openly and finally declare which way they intend to vote in advance of the Committee meeting. To do so without all relevant information and views would be unfair and prejudicial and may amount to maladministration. If Members are in a position with regard to any matter where they consider necessary to express an opinion, they should make it clear that this is a preliminary view and that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee. **If a Member feels that the public who appreciated that pre-disposition was not pre-determination would believe he/she had come to a conclusive view on a regulatory matter before the meeting, then he/she should not take part in the debate on, or vote on, the issue.**
- 6.3 In recognition of the principle that decisions can only be taken on regulatory matters after full consideration of all available information is to hand and has been considered at Committee, individual Members should reach their own conclusions rather than follow the lead of another Member. In this regard, any political group meetings prior to Committee meetings should not be used to decide how Members should vote and votes on such matters should not be taken at such political group meetings. The view of the Local Government Ombudsman is that the use of political 'whips' at group meetings in this way amounts to maladministration.
- 6.4 To help the Chairman and Vice-Chairman to give an effective lead in Committee they should attend a briefing with Officers prior to Committee. Such a briefing with Officers will be available to other Spokespersons on the Committee, if requested.
- 6.5 Members involved in the decision making on regulatory matters should not organise support or opposition to a proposal, lobby other Members, act as an advocate or put pressure on officers for a particular recommendation. However, other County Councillors (who are not part of the decision making process) can make representations and address the Committee.
- 6.6 Officers involved in the processing or determination of regulatory matters who, with their Chief Officer's consent, attend public meetings in connection with development proposals (i.e. pre-application) or submitted planning applications should take great care to maintain impartiality and concentrate on providing factual information and listening to comments and avoid giving views on the merits or otherwise of the proposal.
- 6.7 Similarly Members involved in the determination of planning applications should take great care to maintain impartiality when attending public meetings in relation to planning matters. At such meetings it is preferable for no view on the merits or otherwise of a proposal to be given, but if a view is given the advice in paragraph 6.2 should be followed.
- 6.8 If Members consider that they have been exposed to undue or excessive lobbying or approaches, these should be reported to the Monitoring Officer who will in turn

advise the appropriate Officers (usually the Director of Economy, Transport and Environment or the Director of Culture, Communities and Business Services, as appropriate).

7. Pre-Application and Pre-Decision Making Discussions

- 7.1 In relation to pre-application and pre-decision making discussions on regulatory issues, it will always be made clear at the outset, that such discussions will not bind the Council to make a particular decision and that any views expressed are personal and provisional.
- 7.2 Advice given will be consistent and based upon the relevant law and guidance, development plan and other material considerations. Every effort will be made to ensure that there are no significant differences of interpretation of relevant policies between planning officers.
- 7.3 A written note will be made of such discussions and normally at least two officers will attend potentially contentious meetings, with a follow up letter sent, particularly when material has been left with the Council.
- 7.4 Every effort will be made to ensure that advice is not partial, nor seen to be.

8. Officer Reports

- 8.1 Reports to Committee on regulatory matters must be accurate and cover all relevant points. Where a planning application is subject to a full report this will refer to the provisions of the development plan and whether the application is or is not in conformity with it, together with all other relevant material planning considerations. Where appropriate this will include a full description of the site and any related regulatory background.
- 8.2 All reports will have a written recommendation of action/decision and oral reporting (other than to update an existing report) will only be used on rare occasions when absolutely necessary and this will be carefully minuted when it does occur.
- 8.3 All reports will contain a technical appraisal which clearly justifies the stated recommendation.
- 8.4 All reasons for refusal and conditions to be attached to permissions must be clear and unambiguous.

9. The Decision Making Process and Decisions Contrary to Officer Recommendation and/or the Development Plan

- 9.1 The Committee has given delegated authority to the Director of Economy, Transport and Environment to determine planning applications in certain circumstances and the Scheme of Delegation current as at November 2012.
- 9.2 The Committee shall have the right to defer consideration of any regulatory matter at its discretion. The reason for deferral shall be recorded in the minutes of the Meeting.
- 9.3 In determining all types of applications submitted pursuant to the Town and Country Planning Act 1990 the Council will follow the Guidelines adopted and attached as an Annex to this Protocol. This will be subject to change from time to time to reflect Governmental guidance, and changes in statutory law and case law.

- 9.4 Deputations to the Committee will be permitted in accordance with the following procedures –
- 9.4.1 The total time permitted for deputations in respect of any one meeting of the Committee is one hour;
 - 9.4.2 Deputations may be made by the applicant; his/her agent; and other interested parties, including elected members of other authorities.
 - 9.4.3 Deputations will be permitted to address the Committee for up to a maximum of 10 minutes.
 - 9.4.4 In the event that there are more than six deputations at any one meeting of the Committee, the time allowed for each deputation shall be reduced equally so as to ensure that the total time permitted for deputations does not exceed one hour;
 - 9.4.5 If there are a number of interested parties in respect of a particular matter before the Committee, the Chairman may request that contributions be restricted to nominated spokespersons.
 - 9.4.6 Officers of the Council shall not be permitted to make a deputation to the Committee unless –
 - a) it is being made by the officer in his/her personal capacity, and not as an officer of the Council; or
 - b) it being made by the officer on behalf of the County in its capacity as the applicant or land owner to any matter being considered by the Committee.
 - 9.4.7 Officers of other authorities shall not be permitted to make a deputation to the Committee unless it is being in their personal capacity, and not as an officer of that other authority.
 - 9.4.8 The Chairman may in his or her absolute discretion extend the time permitted for deputations.
- 9.5 In addition to the deputation process listed above, a local County Councillor who is not a member of the Committee may address the Committee in his/her capacity as a locally elected Member from the public gallery for a maximum of 10 minutes. A local County Councillor who wishes to exercise his/her right to address the Committee should not sit with Members of the Committee, nor should he/she have private conversations with or pass notes to Committee Members, as this might give the perception of undue influence. Any time spent by a local County Councillor in addressing the Committee shall not be counted towards the total time permitted for deputations.
- 9.6 In discussing, and then determining, a planning, rights of way or commons registration application or other planning matter, the Committee will confine itself to the merits of the case and the reasons for making a final decision should be clear, convincing and supported by relevant evidence. If Committee members wish to refuse or grant an application against Officer advice or impose additional conditions to a permission, the reasons for refusal, grant, or the additional conditions to be applied must be clearly stated at the time the proposals are moved at the meeting.

- 9.7 The procedure is to be followed by the Committee shall be as follows:-
- a) Chairman introduces item;
 - b) Officer updates/summarises the Report on the item as appropriate;
 - c) Chairman invites deputations to address the Committee. Members of the public speak first, then the applicant, followed by any local County Councillor who wishes to be heard;
 - d) Questions of clarification of fact of deputations can be put by Committee via the Chairman;
 - e) Members of the Committee may ask the Officer questions;
 - f) Officer clarifies matters raised as appropriate;
 - g) Committee debates the application;
 - h) Officer responds to issues outstanding from the debate and clarifies any amendments to the proposed recommendation in the Committee Report in the light of the debate;
 - i) The Chairman may, for the benefit of the members of the Committee, clarify any issues that have arisen during consideration of the matter;
 - j) The Chairman shall specify any amendment agreed by the members and any amendments agreed by officers when putting the recommendation to the vote. The vote is taken, including any amendments that may have been moved and seconded by Committee members;
 - k) If the Committee fails to approve a recommendation in the Officer's report, immediately afterwards the Chairman shall establish the reasons for failing to approve the recommendation. The Chairman shall then move an alternative recommendation with the reasons and a vote is taken.
- 9.8 When necessary during the debate the Chairman will rule on the appropriateness of any proposed amendments to the Officer's recommendations, having taken into account of any advice from the Officer and/or Legal Adviser. Any ruling for not proceeding with an amendment will be recorded in the minutes of the meeting.
- 9.9 If a resolution is passed which is contrary to a recommendation of the Officer's report (whether for approval or refusal) a detailed Minute of the Committee's reasons will be made and a copy placed on the application or case file.
- 9.10 Conscious of the public arena in which regulatory decisions are made, Members will conduct the business of the Committee in a fair and sensitive manner. The debate on a planning application will be confined to the planning merits of a development proposal.
- 9.11 If the Officer's report recommends approval of a departure from the Development Plan, the justification for this should be included in full in the report.
- 9.12 Senior Legal, Rights of Way and Planning Officers should always attend meetings of the Committee to ensure that relevant procedures have been properly followed and relevant issues properly addressed.

- 9.13 Only Officers and County Councillors who are prepared to observe this protocol should be involved in the process of dealing with regulatory matters and determining planning, rights of way or commons registration applications.
- 9.14 Committee members should not vote or take part in the Committee's discussion on an application unless they have been present to hear the entire debate including the Officers introduction and the deputations.
- 9.15 When the meeting has ended, the Chairman will announce that the business of the meeting has concluded.
- 9.16 Where an appeal is made against a decision that was taken contrary to the Officer recommendation, it may be necessary for external consultants to represent the Council at the appeal hearing, if the Officer's position has been professionally compromised by the decision against his recommendation.

10. Site Inspections

- 10.1 A decision by the Committee to carry out a site inspection should normally only take place where objective decisions cannot be taken without viewing the site and adjoining land. Examples of when site visits might be appropriate would be:
- i) The proposal represents a departure from the development plan; or
 - ii) The proposal is contrary to a specific policy, or raises wider policy issues; or
 - iii) The proposal raises particularly unusual factors, for example, it would have a major environmental impact or could lead to loss of jobs and/or financial hardship (e.g. enforcement against an existing use or development that has already been carried out); or
 - iv) There is considerable local concern about a proposal, allied to relevant regulatory reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
- 10.2 The purpose of a site inspection is for Committee members to gain knowledge of the proposal, the application site and its relationship to adjacent sites.
- 10.3 Officers will ensure that the purpose of a site inspection is recorded on the application file.
- 10.4 Site inspections will be carried out by Members of the Committee.
- 10.5 Members of the public, district or parish councillors will not be permitted to attend site inspections. The appropriate local County Councillors will be invited to and may attend the site inspection if they wish. The applicant and/or landowner will only be present to allow entry to the land and will not be allowed to attend the site inspection itself.
- 10.6 Following a site inspection, Officers will prepare a report for the Committee on the regulatory issues and include any relevant information obtained during the site inspection.

11. Review of Decisions

- 11.1 At least on an annual basis arrangements will be made for the Committee to inspect a sample of implemented planning permissions in order that the quality of decisions can be assessed.

12. Complaints and Record Keeping

- 12.1 In order that any complaints can be fully investigated, record keeping will be complete and accurate. In particular, every application file will contain an accurate paper and/or electronic account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 12.2 The same principles of good record keeping will be observed in relation to enforcement and Development Plan matters. Monitoring of record keeping will be undertaken on a continuous basis by senior Officers in the Department of Economy, Transport and Environment Department for Culture Communities and Business Services, as relevant.

Guidelines for determining planning applications under the Town and Country Planning Act 1990 (TCPA) as amended

- (i) Section 38(b) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. The development plan includes the South East Plan, Hampshire Minerals and Waste Core Strategy – for relevant proposals – other development plan documents and ‘saved’ policies from earlier adopted plans. When an application is being determined where a district council’s planning policies are relevant then that council’s development plan policies will also be considered. If the development plan is material to the application then the statutory provision is that the application should be determined in accordance with the development plan unless material considerations indicate otherwise. The emphasis in determining applications is upon a plan led system.
- (ii) Other material considerations include policies and proposals in emerging plans. The weight to be attached to emerging development plan document policies depends upon the stage of preparation or review, increasing as successive stages are reached. Once examined as sound, but prior to adoption, the development plan document has significant material weight. However refusal of planning permission on grounds of prematurity, where a development plan document is being prepared or is under review and not yet adopted, will not usually be justifiable. Other local development documents which are also the subject of consultation and objection will be material to the planning decision which is to be taken.
- (iii) Material considerations include also national planning guidance in the form of Circulars and National Policy Statements, Planning/Mineral/Waste Policy Statements and case law. A ministerial statement may be a material consideration.
- (iv) In exceptional circumstances the personal circumstances of an applicant for planning permission may be a material consideration which may outweigh other planning considerations. Where this is the case specific and valid reasons must be given to justify an exception.
- (v) What constitutes a material consideration is a matter of law. The weight to be attached to the consideration is a matter of planning judgment for the decision maker having regard to the planning evidence. In attaching weight to any offers of community benefit accompanying any planning application members of the Committee will be mindful of the advice in Circular 05/2005 (planning obligations: Section 106 Agreements) as to the legality and materiality of such offers.
- (vi) Members of the Committee must thoroughly consider any advice given by a statutory consultee or relevant Government Department, including views expressed by Natural England, Environment Agency and highway authorities.
- (vii) Members of the Committee must take into account the views of local residents when determining a planning application, but recognise that opposition to the proposal by local residents cannot be a reason in itself for refusing planning permission unless founded on valid planning reasons, which are supported by substantial evidence (Circular 03/2009 Annex Part B21).
- (viii) Members of the Committee must take into account earlier Council decisions,

appeal decisions in relation to the site, or other related appeal decisions.

- (ix) Members of the Committee must not prevent, inhibit or delay development which could reasonably be permitted.
- (x) In relation to planning conditions, Members of the Committee must avoid the imposition of conditions which are unnecessary, unreasonable, unenforceable, imprecise or irrelevant.

Material Considerations

- POLICY
 - National
 - Regional
 - Local
- VIEWS OF STATUTORY CONSULTEES AND ENVIRONMENTAL OFFICERS
- FACTORS ON THE GROUND

Some Factors “on the Ground”

MATERIAL

- visual impact
- privacy/overbearing
- daylight/sunlight
- noise, smell etc
- access/traffic
- health and safety
- ecology
- crime (and fear of)
- economic impact
- planning history
- related decisions
- cumulative impact
- personal factors (rarely)

NOT MATERIAL

- the applicant
- land ownership
- private rights (e.g. access)
- restrictive covenants
- property value
- competition
- loss of view
- “better site” or “better” use
- change from previous scheme
- financial viability
- that it will make something lawful

Scheme of Delegation for Planning Decisions

County matters

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Economy, Transport and Environment is hereby authorised to take decisions under Part III (Control of Development) and Part VII (Enforcement) of the Town and Country Planning Act 1990 (as amended) except when one of the following apply:

- A member of the County Council requests that the decision be made by the Regulatory Committee;
- The Director of Environment considers that the application should be determined by the Regulatory Committee;
- The applicant is a member or an officer of the County Council acting in a private capacity;
- A representation is received requesting to make a 'deputation'
- A decision may result in a financial compensation claim being made against any local authority.

County Council developments

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Environment is hereby authorised to take decisions under Part III (Control of Development) of the Town and Country Planning Act 1990 (as amended) except when one of the following apply:

- A member of the County Council requests that the decision be made by the Regulatory Committee;
- The Director of Environment considers that the application should be determined by the Regulatory Committee;
- The proposal involves the County Council either as land owner or applicant and the scheme is either a major departure from policy not of a minor nature or not of a temporary nature;
- A representation is received requesting to make a 'deputation'
- A decision may result in a financial compensation claim being made against any local authority.

If it is unclear who should make the decision, the Chairman of the Regulatory Committee will be consulted on who should make the decision.

Secondary legislation

In accordance with the provisions of Section 101 of the Local Government Act 1972 (as amended) the Director of Economy, Transport and Environment is hereby authorised to take all decisions, determinations and assessments (as appropriate) under all planning related secondary legislation, including the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 and the Conservation (Natural Habitats Etc) Regulations 1994.

Monitoring

All decisions in relation to planning applications by the Director of Economy, Transport and Environment or the Regulatory Committee will be published on the County Council's web site.

<http://www3.hants.gov.uk/planning/mineralsandwaste.htm>