

CROYDON COUNCIL

REPORT TO:	PLANNING COMMITTEE 14th December 2006
AGENDA ITEM:	
SUBJECT:	AMENDMENT TO THE PLANNING COMMITTEE PROTOCOLS AND MEMBERS' PLANNING CODE OF GOOD PRACTICE
LEAD OFFICER	Divisional Director of Planning and Transportation and Council Secretary and Solicitor
CABINET MEMBER	Councillor Chris Wright Cabinet Member for Planning Environment and Urban Development
WARDS:	ALL
CORPORATE PRIORITY/POLICY CONTEXT: The Council has determined that the function of the Committee include this role.	
FINANCIAL SUMMARY: The recommendation contained in this report does not have any direct financial implication.	
FORWARD PLAN KEY DECISION REFERENCE NO. : This is not an Executive decision.	

For general release

1. RECOMMENDATIONS

That the Committee adopts the proposed draft revised protocols as set out in the Appendix.

2. EXECUTIVE SUMMARY

- 2.1 Following the consideration by this Committee on 2nd March 2006 revised protocols were adopted .The adopted protocols have subsequently been considered by officers and Members and amendments proposed. The draft revised protocols now

proposed have been reviewed and commented upon by the Standards Committee on 8th November 2006 as detailed in paragraphs 2.7 - 2.11 inclusive below.

2.2 The reasons for proposing the amendments to the protocols are to speed up the Committee process, to clarify Officer Member relations and to facilitate compliance with government's performance targets in relation to time taken to determine planning applications.

2.3 The Croydon Council's Constitution, Part 3 Responsibility for Functions, has determined as functions of this Committee at:

Paragraph 2.03.05 - "any protocol concerning the exercise of relevant delegated powers"

2.4 Following the review by this Committee on 2nd March 2006, the Development Control Committee (as it was previously known and now known as Planning Committee) adopted the protocols and Members' Planning Code of Good Practice (Minute no.A30/06 refers)

2.5 Following their adoption the revised protocols, were incorporated into the Council's Constitution.

2.6 It is now proposed that further amendments (referred to below) be made to the following:

- Protocol for Participation at Development Control (now Planning) Committee
- Members' Planning Code of Good Practice
- Protocol for Committee Business

For ease of reference, the proposed amendments are underlined and shown in bold italics and where there is departure from the previous protocol the change is shown by striking through the original version.

2.7 At their meeting on 8th November the Standards Committee reviewed these and were generally supportive of the majority of the proposals.

2.8 In relation to the protocol for Participation at Planning Committee there were discussions about referrals by more than one Councillor or more than one member of the public wanting to address the Committee and whether in such cases the three minutes allocated speaking time should be split or allocated to each speaker. A discussion also took place whether 5 minutes for speakers should be retained for major applications but it was recognized that this had added to the length of meetings.

2.9 Discussions took place to provide for the procedure to be modified if the circumstances made it appropriate .It was recommended to amend this protocol by providing that the procedure set out in the protocol to be amended in exceptional circumstances at the discretion of the Chair.

- 2.10 In respect of the protocol for Committee business, discussion took place concerning the proposal that major applications should be brought to the Committee only in the event of approval. The Standard Committee were advised that there were safe guards in place to enable the applications to be brought to the Committee if recommended for refusal. Ward Councillors can use the Members' Referral Procedure to refer to Committee applications which they support but which officers are minded to refuse. Furthermore, applications can be brought to the Committee at the Head of Planning's discretion and also if there are specified objections received.
- 2.11 As regards the Members Planning Code of Guidance, in view of the Guidance from the Standard Board for England additions to the Planning Code of Good Practice were also considered and these were elsewhere on the Standards Committee's agenda. These proposed additions are now incorporated at various paragraphs in the Members' Planning Code of Good Practice and for easy identification these are underlined and in bold.

3. DETAIL

Proposed changes to the Protocol for Participation at Development Control (now Planning)Committee

Reasons for Changes

- 3.1 As Members may be aware, three minutes were allotted to speakers on all applications prior to the adoption of the most recent changes to this protocol. The position was subsequently changed to allocate five minutes on major applications and three minutes on applications in the 'Minor' and 'Other' categories. It is now proposed to revert to the original position as it is felt that allowing an additional two minutes for major applications has not significantly benefited the Committee process but has lengthened the duration of the meeting. The Committee meetings commence at 6.30 pm and have a guillotine at 10 pm for Members to decide whether to continue with the remaining business. Frequently meetings continue in excess of this time with members of the public waiting over 3 hours for their items to be heard.

It is therefore, proposed that reference to five minutes in the existing protocol be changed to three minutes ,thereby speeding up the Committee process.

Change of Name

- 3.2 Following the change of name of the Development Control Committee to Planning Committee, the protocol is being amended to reflect this.

Other Changes

- 3.3 In the introductory paragraph it is stated that "in exceptional circumstances, the procedure can be modified at the chair's discretion".

3.4 Existing Protocol: Paragraph 1(c)

3.4.1 Paragraph 1(c) of the protocol distinguished between major and all other applications and allowed speakers at the Committee to speak for five minutes on major applications and three minutes on all other applications.

Proposed amendments

3.4.2 It is now proposed to amend paragraph 1(c) so that speakers on all applications irrespective of whether the application is in the major, minor or other categories are given three minutes.

3.5 Existing Protocol: Paragraph 2(d)

3.5.1 Pursuant to paragraph 2(d) of the protocol, the referring Councillor or Ward Member could address the Committee for a maximum of five minutes.

Proposed amendment

3.5.2 It is now proposed that the referring Councillor or Ward Members be permitted to address the Committee for a maximum of three minutes.

3.6 Existing Protocol: Paragraph 2(e)

3.6.1 Pursuant to paragraph 2(e) of this protocol a Member of Parliament and/or the Greater London Assembly Member for the Constituency within which the application site was located was able to address the Committee for a maximum of five minutes.

Proposed amendment

3.6.2 It is proposed to reduce the time to three minutes.

3.7 Existing Protocol: Paragraph 2 (g)

3.7.1. Pursuant to Paragraph 2(g) of the protocol Applicants, Agents, Objectors, Supporters, Ward Councilors, Visiting Members, MPs and GLA Members were permitted to speak for a maximum of five minutes on Major applications and three minutes on Minor and Other applications.

Proposed amendment

3.7.2 It is now proposed that all such speakers referred to in paragraph 3.7.1 above be permitted to speak for a maximum of three minutes on all categories of applications.

Proposed Changes to the Member's Planning Code of Good Practice

3.8 The Members' Planning Code of Good Practice sets out what actions Members should and should not take depending on the nature of their interest. In addition, the Planning Code sets out advice on fettering of discretion, lobbying, contact with interested parties, contact with officers, decision making, public speaking at meetings and site visits. The failure to comply with the Code of Guidance may be a breach of the Council's Code of Conduct and could render a decision illegal or subject to challenge.

3.9 It is proposed to add an additional paragraph in section 2 (which deals with Development Proposals and Members' interests) as follows:

"Do be aware that care should be taken in how you choose to express your views, particularly in person, so that you are not subject to an allegation that you have made improper use of your position to influence a decision on the matter. This aspect is dealt with more fully in section 4 concerning lobbying."

3.10 Section 3 of the Planning Code deals with fettering of discretion, it is recommended that Members declare a personal and prejudicial interest where they have been significantly involved in the preparation, submission or advocacy of a planning proposal for another local or public authority of which they are a member or for an outside body to which they have been appointed or nominated by the Council. Reference is made to the ability to rely on an exemption (which is set out in paragraph 10(2) of the Members Code of conduct which appears at Part 5J of the Constitution) in such circumstances, but Members are cautioned that, in relying on the exemption, there will be a fettering of the Member's discretion.

It is therefore proposed to add the following additional paragraphs in this section of the Code:

"There are circumstances where you may not be able to rely on the exemption in paragraph 10(2), even though the base criteria are met. The Standards Board has made investigation findings of a failure to comply with the Code and held that paragraph 10(2) is inapplicable particularly where there are significant financial consequences associated with the decision."

"Do consider the Council's guidance for the Councillors and Officers on Outside Bodies to assist you in determining what your interests might be."

3.11 Section 4 of the Code deals with lobbying of and by Members. The Section sets out a comprehensive list of consideration for Members.

In the Planning Code it is proposed to bring the Members' attention to the guidance issued by the Standards Board on this topic. It is therefore proposed to add an additional paragraph in this section as follows:

"Do read the Standards Board for Englands guidance entitled Lobby groups and dual – hatted members and the Code of Conduct" to assist you. The website

address for the Standards Board is www.standardsboards.co.uk/The Code of Conduct/Guidance/Guidance for local authorities".

- 3.12 Section 9 of the Code deals with site visits. It is proposed to make the following addition:

"Don't attend a Committee site visit if you have referred the application to the Committee".

- 3.13 At this Authority, the Head of Planning reports on appeal decisions at each Committee and those that have been subject of Member's decision. There are also statistical reports detailing appeal success. Furthermore, Members are appraised of the Council's performance in complying with government targets. Therefore, it is proposed to delete section 10(c) of the existing protocol which requires participation by Members in annual review of a sample of planning decisions. This task was incorporated in a template of good practice now formally adopted but the 'annual review' is covered by other practices.

Proposed Changes to the Protocol for Committee Business

Reasons for Changes

- 3.14 The main change in this Protocol is to enable 'Major' planning applications as defined by Central Government (10 or more dwellings or 1000m² or more of commercial floor area) to be refused planning permission under delegated powers. At present the majority of such Major applications are presented to Committee for decision.
- 3.15 The Government has set targets for Councils in relation to the percentage of decisions taken within statutory time periods for applications within the Major, Minor and Other categories and has offered rewards of Planning Delivery Grant for good performance. Croydon's performance in the Minor and Other categories is well ahead of the Government's targets but performance in the Major category is at risk of not meeting the target, hence the request for more delegated powers on Major applications. Should performance slip further, there is a danger that Croydon would become a 'Standards Authority' for Major Applications; this would result in some Government intervention and would adversely affect the Council's score in the Environment block in the Council's Comprehensive Performance Assessment (CPA).
- 3.16 As the changes to this protocol are extensive, the provisions of the existing protocol are not repeated but instead when explaining the proposed amendments the existing protocol's paragraphs numbers are mentioned.
- 3.17 Reference in this protocol to the "Development Control" Committee has been deleted and replaced with "Planning" Committee to reflect the correct new name of this Committee.
- 3.18 In this proposed protocol there are broadly three categories of applications/matters which will be dealt with at the Committee, and these categories are:

- (a) Planning applications brought to the Committee if recommended for approval (mainly major applications).
- (b) Planning applications in all 3 categories (major, minor and other) brought to the Committee regardless of whether recommended for approval or refusal.
- (c) Other specified business or matters required to be dealt with at the Committee.

(a) Planning Applications brought to the Committee if recommended for approval

3.19 Paragraph 3 of the proposed protocol states:

“The ~~Development Control~~ Planning Committee shall have the decision making function in respect of the following applications if these applications are recommended for approval. (If recommended for refusal then such applications will normally be decided under delegated powers unless referred to the Committee by the Head of Planning Control).”

3.20 These applications are listed below. Currently such applications are brought to the Committee regardless of whether recommended for approval or refusal. It is now proposed to change this and such applications are only brought to the Committee if recommended for approval unless referred to the Committee by the Head of Planning control.

- **Major applications-** paragraph 3.1 of the proposed protocol (*in the existing protocol the content of this paragraph is at paragraph 3*). This paragraph describes what constitutes “Major Applications” for the purposes of this protocol.
- **Applications accompanied by an Environmental Impact Assessment –** paragraph 3.2 of the proposed protocol (*in the existing protocol it is at paragraph 5*)
- **Applications not in accordance with the adopted Development Plan –** paragraph 3.3 of the proposed protocol (*in the existing protocol it is paragraph 10*). The reference to “Unitary Development Plan” is replaced by “Development Plan”. This is to ensure any future change of terminology (when the existing plan is changed and subsequently adopted) can be easily reflected and encompassed by the protocol without the need to make amendment to this protocol.

(b) Planning Applications brought to the Committee regardless of whether recommended for approval or refusal

3.21 Paragraph 4 of the proposed new protocol states:

“4. The Planning Committee shall always have the decision making function in respect of the following applications (regardless of whether recommended for approval or refusal):-”

3.22 These applications are:

- **Where objections as specified have been received** - paragraph 4.1 of the proposed protocol (*in the existing protocol it is at paragraph 8*). Reference to "recognised" is deleted to provide greater certainty on a residents association representation requiring consideration at Committee.
- **Member's referral** - paragraph 4.2 of the proposed protocol (*in the existing protocol it is at paragraph 4*). This deals with the case where an application is referred to the Committee under the Members' referral procedure and the referring Member is opposed to the officer's recommendation.
- **Referred by the Head of Planning Control**- paragraph 4.3 of the proposed protocol (*in the existing protocol it is at paragraph 7*). Reference to the Chief Officer is deleted
- **Applications submitted by Members** – paragraph 4.4 of the proposed protocol (*in the existing protocol it is at paragraph 11*). This paragraph deals with a case where a Member has themselves submitted a planning application.

(c) Business or matter required to be dealt with at Committee

3.23 Paragraph 5 of the new proposed protocol states:

"5. The Planning Committee shall always have the decision making function in respect of the following matter or business:-"

3.24 These matters or business are:

- **Revoking or modifying planning permission** – paragraph 5.1 of the proposed protocol (*in the existing protocol it is at paragraph 6*). This deals with a case where Committee authorisation is required to the making of an order under Section 97 of the Town and Country Planning Act 1990 (Section 97 deals with the local planning authority's power to revoke or modify planning permission) and the making of such an order is unopposed and authorisation is also sought to advertise such an order.
- **Tree preservation Orders- where there have been 2 or more objections**- paragraph 5.2 of the proposed protocol (*in the existing protocol it is at paragraph 9*). This deals with the case where Committee authorisation is sought to confirm with or without modification a Tree Preservation Order, to which two or more objections are received.
- **Revision/amendment of protocols** (*this appears at paragraph 5.3 of the new proposed protocol, in the existing protocol it is at paragraph 12*).

3.25 A new paragraph 6, which defines delegated business, is inserted in the new proposed protocol and it states:

"6. "Delegated business " is considered to be all matters and applications (major, minor or others) not required to be decided at Planning Committee but where

the decision is to be taken at officer level in accordance with the Council's Constitution and the Departmental scheme of delegation.”

4. CONSULTATION

4.1 The Planning Control Committee Members (including the Reserved Members) have been consulted

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2006/07	2007/08	2008/09	2009/10
	£'000	£'000	£'000	£'000
Revenue Budget available				
Expenditure				
Income				
Effect of decision from report				
Expenditure				
Income				
Remaining budget	_____	_____	_____	_____
Capital Budget available				
Expenditure				
Effect of decision from report				
Expenditure				
Remaining budget	_____	_____	_____	_____

5.2 **The effect of the decision** There are no financial implications arising from this decision

5.3 **Risks** No financial risks identified

5.4 **Options** None identified

5.5 **Future savings/efficiencies** None identified

5.6 (Approved by: Alison Sweeting Head of Finance, Policy and Corporate Services Department.)

6. COMMENTS OF THE COUNCIL SECRETARY AND SOLICITOR

6.1 The Solicitor to the Council advises that there are no additional legal considerations beyond those detailed in the report. However once agreed by The Planning Committee appropriate changes should be made to the Departmental Scheme of Delegation and a revised copy lodged with the Council Secretary and Solicitor.

(Approved by Samra Yunus, Corporate Solicitor on behalf of the Council Secretary and Solicitor.)

7. HUMAN RESOURCES IMPACT

7.1 There are no Human Resources considerations arising out of this report.

7.2 Approved by: Robert Laban, Head of HR Consultancy, on behalf of the Divisional Director of HR & OD.

8. CUSTOMER IMPACT

8.1 It is anticipated that the amendment to the Referral protocol will result in ensuring that the Committees are conducted efficiently and in a focused manner. This will have a positive impact on customers.

9. EQUALITIES IMPACT ASSESSMENT (EIA)

9.1 It should be noted that the protocols equally apply to all sectors of the community .A formal EIA has not been undertaken to date.

9.2 Approved by Aiden McManus, Divisional Director, Development Services & Management Systems, Planning and Transportation.

10. ENVIRONMENTAL AND DESIGN IMPACT

10.1 There are none for the purpose of this report.

10.2 Approved by Eddy Taylor Environmental and Sustainability Manager.

11. HUMAN RIGHTS & CRIME AND DISORDER REDUCTION IMPACT

The Croydon Council's Constitution is Human Rights compliant and designed to increase accessibility and understanding of decision making by the Council and there are no Crime & Disorder considerations arising from this report.

12. FREEDOM OF INFORMATION /DATA PROTECTION CONSIDERATION

12.1 The amended protocol referred to above will also form part of the Council's Constitution published on the Council's website

CONTACT OFFICERS: Samra Yunus, Corporate Solicitor Tel: 020 8686 4433 Ext: 62320
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BACKGROUND DOCUMENTS:

APPENDIX

PROTOCOL FOR PARTICIPATION AT DEVELOPMENT CONTROL Planning COMMITTEE

This procedure relates to the consideration of a planning application as defined in the Members Referral Procedure. In exceptional circumstances, the procedure can be modified at the Chair's discretion.

The Procedure is as follows:

1. (a) Before the meeting takes place you will be asked whether you wish to address the meeting, and if so, what item(s) you are interested in and in what capacity you will be speaking i.e. objector, supporter, applicant or agent. **You are urged to arrive at least 15 minutes before the start of the meeting** to allow the order of speakers to be prepared. Speaking at the meeting shall be at the discretion of the Chair.

Where it is clear that more than one person wishes to speak on a particular item, the Chair will ask for a representative to be nominated from amongst them to speak on their behalf.

- (b) Any evidence presented by objector's or supporters should be submitted to the planning officers at least 24 hours prior to the Development Control Committee. Acceptance of any late evidence would be at the discretion of the Chair.
- (c) All those who can speak at Committee can do so for a maximum of ~~five minutes on major applications and three minutes on all other Committee business~~ **three minutes on all applications**
- (d) At the chair's discretion questions from Committee Member's may be put to those speaking at the Committee.

2. The procedure at Committee will usually be as follows:-
- (a) The **officers** will give a brief presentation showing relevant slides if appropriate;
 - b) The **applicant or agent** will then be given the opportunity to speak on the application for a maximum of 3 minutes
 - (c) An **objector** will then be invited to address the meeting for a maximum of 3 minutes.
 - (d) A **supporter** (to be unconnected with the application/applicant) will be invited to address the meeting. The **Ward Councillors** or a **Member** who has made a referral who is not on the Committee will then be invited to speak for a maximum of ~~five~~ **three** minutes.
 - (e) A Member of Parliament and/or the Greater London Assembly Member for the Constituency within which the application site is located will then be invited to speak for a maximum of ~~five~~ **three** minutes.
 - (f) The Member of Parliament and/or the Greater London Assembly Member should identify in writing (to the Planning and Transportation Department, Central Processing Unit, Room 13.01A Taberner House, Park Lane Croydon or e-mail phil.mills@croydon.gov.uk) the matters of strategic importance they wish to raise. Although such matters may be raised in relation to any planning application, it will normally be expected that matters of strategic importance will only be raised in relation to applications of strategic importance within the meaning of the Town and Country Planning (Mayor of London) Order 2000 which defines a strategic application as one involving either; a) Large Scale Development, b) Major Infrastructure. c) Development which may affect strategic policies or d) Development that may affect strategic sites or views.

- (g) Applicants, Agents, Objectors, Supporters, Ward Councillors, Visiting Members, M.P's and GLA Members will be invited to speak for a maximum of ~~5~~ **3** minutes on ~~Major Applications and 3 minutes~~ on all ~~other~~ applications.
- (h) At the Chair's discretion questions relating to matter of fact only from committee members may be put to those speaking at committee.
- (i) Finally, **Members of the Committee** will debate the item.
- (j) The meetings to start at 6.30pm and have a guillotine of 10.00 pm (one option would be to take a vote at 9.55pm whether to grant extra 30 minutes extension)

MEMBERS' PLANNING CODE OF GOOD PRACTICE

Background

This code has been prepared in response to the Local Government Association's Guidance note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the introduction of the new ethical framework.

Introduction

The aim of this code of good practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of Planning: to control development in the public interest.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the code applies: this code of good practice applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters as it does to planning applications.

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

1. Relationship to the Members' Code of Conduct: General

- **Do** apply the rules in the Members' Code of Conduct first, which must be always be complied with.
- **Do** then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put: - the Council at risk of proceedings on the legality or maladministration of the related decision; and yourself at risk of either being named in a report made to the Standards Committee or Council or, if the failure is likely to also be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

2. Development Proposals and Members' Interests

- **Do** disclose the existence and nature of your interest at any relevant meeting, Including informal meetings or discussions with officers and other Members. Preferably, disclose your interest at the beginning of the meeting and not just at the commencement of discussion on that particular matter.
- **Do** then act accordingly.

Where your interest is prejudicial:-

- 1 **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority. If you are at a meeting when the item is discussed you must leave the room for the duration of consideration of the item.
- 2 **Don't** try to represent ward views, get another (ward) Member to do so instead.
- 3 **Don't** get involved in the processing of the application.

- 4 **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 using your position to discuss personally with officers an application in which you have a personal and prejudicial interest when other members of the public would not have the opportunity to do so.
- 5 **Do** be aware that, whilst you're not prevented from seeking to explain and justify a proposal in which you have a prejudicial interest to an appropriate officer (in person or in writing), the Code places greater limitations on you in representing that proposal than would apply to a normal member of the public. (For example, where you have a personal and prejudicial interest in a proposal to be put before a meeting, you will have to withdraw from the room or chamber whilst the meeting considers it, whereas an ordinary member of the public would be able to make use of [the][any] public speaking scheme to address the meeting on the proposal and observe the meeting's consideration of it from the public gallery.)
- 6 **Do be aware that care should be taken in how you chose to express your views, particularly in person, so that you are not subject to an allegation that you have made improper use of your position to influence a decision on the matter. This aspect is dealt with more fully in section 4 below concerning lobbying.**
- 7 **Do** notify the Monitoring Officer in writing of your own planning proposals and those where you act as agent for a third party – this notification should be made no later than submission of the application. These proposals will always be reported to the Committee as main items and not dealt with by officers under delegated powers.

3. Fettering Discretion in the Planning Process.

- **Don't** fetter your discretion and therefore your ability to participate in planning decision making at this Council by making up your mind, or appearing to have made up your mind, on how you will vote on any planning matter (including whilst serving

on another body) prior to formal consideration of the matter at a meeting(s) of the planning authority and of your hearing the officer's presentation and evidence and arguments on both sides. Fettering your discretion in this way may put the Council at risk of a finding of maladministration and of legal proceedings in respect of the decision on the grounds of a danger of bias or pre-determination or of a failure to have taken into account all of the factors enabling the proposal to be considered on its merits.

- **Do** be aware that the above includes 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, either on behalf of the Council or in respect of a particular area. 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 determine the application purely on its planning merits or to act impartially in respect of the application.

- **Do** consider, where you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of:
 - another local or public authority of which you are a member; or
 - body to which you have been appointed or nominated by the Council as its representative, that
 - it is recommended you disclose a personal and prejudicial interest (the Members Code of Conduct allows for an exemption in that you may choose not to regard yourself as having a prejudicial interest in matters which relate to these organisations); but
 - should you decide to make use of the exemption, you will have fettered your discretion (as described in the paragraph above) and you should act accordingly.

(there are circumstances where you may not be able to rely on the exemption in paragraph 10(2), even though the base criteria are met. The Standards Board has made investigation findings of a failure to comply with the Code

and held that paragraph 10(2) is inapplicable, particularly where there are significant financial consequences associated with the decision).

- **Don't** speak and vote on an application/matter where you have fettered your discretion. You do not also have to withdraw, but you may prefer to do so for the sake of appearances.
- **Do** explain that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes. Use the disclosure of interest form provided.
- **Do** decide where you wish to exercise your decision-making powers.
- **Do consider the Council's guidance for Councillors and Officers on Outside Bodies to assist you in determining what your interests might be.**

4. Lobbying of and by Councillors

- **Don't** declare to any person the way you intend to vote, or express an opinion on the merits in such a way or of such firmness that it implies the same thing, as this will result in you having fettered your discretion.
- **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.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal wherever possible. If a degree of hospitality is unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and remember to register the gift or hospitality where its value is over £25 in accordance with the Council's Code of Conduct.

- **Do** come to meetings with an open mind and demonstrate that you are open minded.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and you are likely to have a personal and prejudicial interest and have to withdraw.
- **Do** join interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE or a local civic society, but declare a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation that you must reserve judgement and the independence to make up your own mind on each separate proposal.
- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** discuss or decide how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.
- **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), who will in turn advise the appropriate officers to follow the matter up.

- **Do** note that, unless you have a personal and prejudicial interest, you will not have fettered your discretion or breached this or Planning Code of Good Practice through:
 - listening or receiving viewpoints from residents or other interested parties;
 - making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting/item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in their interests and will make up your own mind having heard all the facts and listened to the debate.

- **Do read the Standards Board for England's guidance entitled "Lobby groups and dual-hatted members and the Code of Conduct" to assist you. The website address for the Standard Board is www.standardsboards.co.uk/TheCodeofConduct/Guidance/Guidanceforlocalauthorities**

5. Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.

- **Do** otherwise:
 - follow the rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Head of Planning Control any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation unless an officer is present and/or it has been organised by officers.
- **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 view or state how you or other Members might vote.

6. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the [Head of Planning Services/Development Control Manager], which may be incorporated into any committee report).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged 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.

7. Decision Making

- **Do** comply with section 54A of the Town and Country Planning Act 1990 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** have recorded the reasons for Committee's decision to defer any proposal.
- **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.

8. Public Speaking at Meetings

- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

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

9. Site Visits

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
 - there are significant policy or precedent implications and specific site factors need to be carefully addressed.
- 1 **Do** inform the Committee Manager by email whether or not you will be attending and also if you have any special requirements.
- **Do** ensure that any information which you gained from the site visit is reported back to the Committee, so that all Members have the same information.
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- **Don't** hear representations from any other party with the exception of the Ward Member(s) whose address must focus only on site factors and site issues. Where you are approached by the applicant or a third party, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.

- **Don't** express opinions or views to anyone.
- **Don't** enter a site which is the subject to a proposal on your own, even in response to an invitation. Where you do feel it is essential for you to visit the site other than through attending the official site visit, do not do so unless you have first spoken to the Head Of Planning Control or case officer about your intention to do so and can ensure you will comply with the above good practice rules.

Don't attend a Committee site visit if you have referred the application to the Committee

10. Training

- Don't participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- Do endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- ~~Do participate in the annual review of a sample of planning decision to ensure that Members' judgments have been based on proper planning considerations~~

11. Breach of Protocol

It should be noted that a breach of this code is a potential breach of the Council's Code of conduct and would lead to a referral to the Standards Board and may lead to disciplinary action being taken against the Member personally by the Standards board. In addition it could render any related decision of the Council illegal or challengeable.

PROTOCOL FOR COMMITTEE BUSINESS

1. Under Part 3 of the Constitution of the London Borough of Croydon the ~~Development Control~~ Planning Committee and the Director of Planning and Transportation have delegated to them all the powers of the Council relating to: Town and Country Planning, Development Control, Conservation and Commons Registration except those reserved to the Council or delegated to the Executive by law or the Council's Constitution.
2. This Protocol has been prepared by the **Planning** Committee, and approved by the Council to identify, without prejudice to the delegations described above, the matters that will normally be dealt with by the **Planning** Committee and the matters that will normally be discharged by the Director in accordance with his or her Department's **scheme of** Delegation.
3. **The ~~Development Control~~ Planning Committee shall have the decision making function in respect of the following applications if these applications are recommended for approval. (If recommended for refusal then such applications will normally be decided under delegated powers unless referred to the Committee by the Head of Planning Control).**

3.1 Major Applications

To determine major applications for planning permission which for the purpose of this protocol is defined as applications which falls within one or more of the categories listed below:-

- (a) Commercial and/or industrial development with a gross floor space exceeding 3000 m²; or
- (b) Retail development with a gross floor space exceeding 2500 m²; or
- (c) Development involving the change of use of one hectare or more of land; or
- (d) Residential development comprising the erection of 10 or more dwellings
- (e) A mixed use development with a gross floor space exceeding 2,500 m².

And for the purposes of this protocol known as “Major Applications”

3.2 Application accompanied by an Environmental Impact Assessment

To determine an application accompanied by an Environmental Impact Assessment.

3.3 Application not in accordance with the ~~UDP~~ adopted Development Plan

To determine an application that does not accord with one or more provisions of the Unitary ~~adopted~~ Development Plan.

4. The planning Committee shall always have the decision making function in respect of the following applications (regardless of whether recommended for approval or refusal):-

4.1 Objections to the application

To determine a planning application where the recommendation either for approval or refusal is opposed by the receipt of material planning considerations in writing from:-

- (a) 12 or more persons;
- (b) or from a ~~(recognised)~~ residents' association, amenity society;
- (c) or by way of a petition containing 20 or more signatures.

4.2 Member's referral

To determine a planning application which has been referred to Committee under the Members Referral Procedure **and the referring Member is opposed to the officer's recommendation**

4.3 Referred by the Head of Planning Control

To determine any matter of business referred to the Committee by a ~~Chief Officer~~ or the Head of Planning Control.

4.4 Applications submitted by Members

To determine planning applications **that have been** submitted by Members of the Council.

5. The Planning Committee shall always have the decision making function in respect of the following matter or business:-

5.1 Revoking or modifying planning permission

To authorise the making of an Order under Section 97 of the Town and Country Planning Act 1990 revoking or modifying planning permission and in cases where such an Order is unopposed to advertise the making of the Order under Section 99 of the said Act.

5.2 Tree Preservation Orders where 2 or more objections have been received

To confirm with or without modification, Tree Preservation Orders, to which 2 or more objections have been received.

5.3 Revision/amendment of protocols

To agree revisions of, and amendments to, the planning protocols and Member's Planning Code of Good Practice.

6. "Delegated business" is considered to be all matters and applications (major, minor or others) not required to be decided at Planning Committee but where the decision is to be taken at officer level in accordance with the Council's Constitution and the Departmental scheme of delegation.