

# Luton Borough Council Constitution

## Section 6: Protocols and policies

### Part 6 A: Protocols and Conventions

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## Section 6: Protocols and policies

### Part 6 A: Protocols and Conventions

#### 1. Protocol for matters of convention

##### 1. Protocol

- 1.1 The Council has agreed that the arrangements set out below should apply by way of convention.
- 1.2 The 3 Political Groups on the Council have each agreed that the party whip will not be applied at meetings at any scrutiny body.
- 1.3 The Members appointed to be the Chairs of the Overview & Committee, and of each of the Scrutiny Sub-Committees (including the Overview and Scrutiny Board), Panels, etc. shall be Members of the Major Opposition Group.
- 1.4 The Members appointed to be the Vice-Chairs of the Overview & Committee, and of each of the Scrutiny Sub-Committees (excepting the Overview and Scrutiny Board), Panels, etc. shall be Members of the Controlling Group.
- 1.5 The 2 Vice-Chairs appointed to Overview & Scrutiny Board shall not be drawn from the Major Opposition group but should reflect the political Groups represented on the Council.
- 1.6 For the purposes of this Protocol:
  - **“Controlling Group”** means the Political Group the Leader of which is the Executive Leader;
  - **“Opposition Group”** means a Political Group having seats on the Council other than any Political Group the Leader of which is the Executive Leader;
  - **“Major Opposition Group”** the Opposition Group having the largest number of seats on the Council;
  - **“Minor Opposition Group”** means the Opposition Group having the second largest number of seats on the Council

## 2. Protocol for Scrutiny

### 1. Purpose

- 1.1 The purpose of this protocol is to give guidance on the conduct of scrutiny. It supplements and interprets the Council's constitution, it does not take its place or override it. The status of this protocol is that it is advisory and nothing which follows limits the scope of scrutiny or prevents Members of scrutiny from carrying out their legitimate role. It does however represent agreed guidance on best practice and should only be departed from for good reasons.

### 2. The nature of scrutiny

- 2.1 Scrutiny is a means to an end, not an end in itself. The objective of scrutiny is to expose the way in which decisions are made about public services and by public bodies, to hold them to account and thereby to improve the quality of decisions about services and consequently the services themselves.
- 2.2 Scrutiny has no executive powers. It must therefore work by probing, investigating, enquiring, encouraging, persuading, reporting and recommending. Conflict should be a last resort because it is usually less effective than other more collaborative approaches.

### 3. The functions of scrutiny

- 3.1 To hold to account the Council's Executive by scrutinising matters that are referred and decisions which are 'called in' and by challenging decisions of the Executive which represent a departure from any of the Council's policies.
- 3.2 To inquire into matters of public interest selected by Members which are included in scrutiny committees' work programmes.
- 3.3 To contribute to the development of policies and strategies of the Council
- 3.4 To monitor, review and comment upon the Council's performance by reference to national and local performance indicators and by other means
- 3.5 To scrutinise other public services in accordance with powers and duties conferred by statute (e.g. health services) and otherwise by agreement

### 4. The methods of scrutiny

- 4.1 The absence of any executive responsibilities should allow scrutiny the time to examine topics in depth, to take evidence, to commission research, to consult the public and to study examples of best practice in order to reach well informed conclusions and to make soundly based recommendations. The techniques which scrutiny committees may use include the following:

- references back to the Executive - with recommendations
- recommendations to the Executive
- references to Council
- enquiries into topics
- expert witnesses
- research
- public consultation (wide range of techniques - see consultation strategy/guidance)
- panels involving local organisations
- reports
- performance data/comparisons (see benchmarking guidance)
- challenging - poor performance, lack of improvement, easy targets
- training events (home and away)
- inspections of services
- visits to other authorities
- use of sub committees and panels
- collaboration with other public service delivery agencies to review their performance

4.2 Where an item is referred back to the Executive with recommendations there should always be a report back to the relevant scrutiny body to advise them of the decision of the Executive.

4.3 Reports on completed scrutiny topics will be submitted to the Executive, at which the Chair of the relevant scrutiny body should attend to present the committee's final report.

## 5. The Executive

5.1 Scrutiny and Executive in their different ways share a common objective to deliver the best and most cost effective services to meet the needs of local people and continue to improve the Council's performance to achieve the ambitions set by the Council.

5.2 Liaison between Chairs of scrutiny bodies and Executive Portfolio holders is encouraged.

5.3 Scrutiny should not be used to block, delay or frustrate the legitimate will of the Executive. The Executive should give serious and proper consideration to references, reports and recommendations from scrutiny. When scrutiny bodies make recommendations to the Executive they must be able to support those recommendations with evidence and argument. If recommendations of scrutiny bodies are rejected the Executive should be prepared to say why.

5.4 Scrutiny bodies should always consider inviting and involving appropriate Members of the Executive in consideration of issues and topics. Members of the Executive should be prepared to respond to invitations from scrutiny to participate in such consideration.

5.5 When officers are providing briefings to or discussing policy development with the appropriate Member(s) of the Executive, they should consider engaging with the Chair of the relevant scrutiny body.

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### 2: Protocol for Scrutiny

5.6 It is expected that in preparing forward plan request forms for Executive decisions, report authors will give consideration to those matters that might be of interest to scrutiny and a report to the relevant scrutiny body programmed for submission prior to Executive.

#### 6. Policy development

6.1 A productive approach towards policy development is for scrutiny bodies to be engaged at the earliest possible opportunity and at key stages throughout the process.

6.2 Such engagement will give the relevant scrutiny body an opportunity at the outset to suggest what factors should be considered, what information should be gathered, what consultation with local people, interested parties and other organisations should be carried out and how it should be carried out, and what issues will need to be addressed.

6.3 At key stages the relevant scrutiny committee could be asked to review what has been done and to comment on whether sufficient work has been done to inform policy development. At this stage, after having heard all the evidence, the committee could be asked to give their views. At the final stage the relevant scrutiny body could test the policy against the background they have already seen and their knowledge of local circumstances.

6.4 The advantage of this process is that scrutiny bodies will have more time available for a full consideration of all the issues and they are also able to bring a cross party perspective to policy issues.

6.5 The result of this process is more likely to be a soundly based policy proposal which has the support of scrutiny and can then be reported to the Executive with a recommendation for approval from the scrutiny body thus significantly reducing the risk of call in.

#### 7. Consultation documents

7.1 In developing responses to major consultation papers it is critical that scrutiny is consulted so that the proposed response could be reported to the Executive captures the views of the relevant scrutiny body.

7.2 Budget and Capital Programme

7.3 Please see Appendix B

#### 8. Publicity

8.1 The launch of scrutiny task and finish groups is publicised by the issue of a press release.

8.2 Ward councillors are welcome to attend scrutiny meetings when the topic is of particular interest to people living in their ward and should review scrutiny agenda pages to ascertain whether there is anything of interest.

## Appendix A - The Scrutiny process

Number	Protocol	Process
1	Scoping, planning, method, evidence, witnesses, stakeholders, publicity	<p>Define the scope of the topic, identify all the aspects which need to be considered but exclude those which should not.</p> <p>Plan how the study is going to be carried out, decide what information is required and who should be called as witnesses to give evidence. Identify people and organisations who have an interest in the topic and should be invited/involved/consulted.</p> <p>Decide whether and how the work of the panel should be publicised.</p> <p>Plan the process for collecting evidence and interviewing witnesses (e.g. whole panel, individual Members etc.)</p>
2	Evidence and information	Carry out the plan, site visits if appropriate, consult stakeholders to find out their views, collect information
3	Analyse the evidence/information	Identify any gaps in the evidence or information, follow up to fill the gaps, check any information or evidence which conflicts, identify common threads.
4	Reach conclusions and formulate recommendations	Conclusions should be based on the evidence and information. Consult stakeholders about the recommendations.
5	Report	<p>Prepare and agree a report to the Executive/Council.</p> <p>The report should describe the work which has been done, summarise the evidence and information about the topic, justify the conclusions based on the evidence and argue the case for any recommendations.</p>

## Appendix B – Involving Scrutiny in the budget process

Protocol	Process
Purpose	To set out a basis on which the challenges, choices and opportunities presented by the budget for the forthcoming financial year can be considered by scrutiny outside of the party political arena.
Objectives	To make a valid and constructive contribution to the development of a budget that is fair to taxpayers, tenants, service users and the Council's employees.
Principles	Scrutiny will follow guidance on best practice as set out in the 'in the spotlight' briefing note published by the Centre for Public Scrutiny as follows: <ul style="list-style-type: none"> <li>• Critical friend – challenging but constructive</li> <li>• Engaging the public – understanding the process and the issues on behalf of the public</li> <li>• Owning the process – authoritative, based on expert advice</li> <li>• Making an impact – realistic approach, sensible suggestions</li> </ul>
This protocol	<ul style="list-style-type: none"> <li>• Doesn't override the Council's constitution</li> <li>• Is guidance to elected Members as to what has been agreed between Executive and Scrutiny</li> <li>• Allows time for the Executive to consider options and to prepare proposals.</li> <li>• Allows time for scrutiny to examine the key strategic issues and the choices facing the Council</li> <li>• Sets out the basis for scrutiny which is to be evidence based and focussed on strategic issues</li> </ul>
Confidentiality	Subject to the rules about exempt information set out in schedule 12A of the Local Government Act 1972 <ul style="list-style-type: none"> <li>• Consideration by the relevant scrutiny body of service changes to be 'in private'.</li> <li>• Information about options for change is to be treated as confidential to the Council</li> <li>• Information about the implications of options for change will be provided to the relevant scrutiny body in confidence to the extent that it is available</li> <li>• the relevant scrutiny body may decide to reserve their position if important information relevant to the consideration of the options cannot be provided at that stage</li> <li>• Firm proposals for change will be scrutinised in public at the appropriate time</li> <li>• Information released to Scrutiny about firm proposals will be treated as in the public domain</li> </ul>

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2: Protocol for Scrutiny

<b>Protocol</b>	<b>Process</b>
What is being scrutinised	<ul style="list-style-type: none"><li>• The big issues – e.g. budget pressures, policy changes</li><li>• Consistency and compliance with corporate and service plans and progress towards the Council's goals</li><li>• Value for money – for taxpayers, residents and service users. Achievement of service standards</li><li>• Responsiveness to customers and the public – have their views and wishes been taken into account?</li></ul>
Who is being scrutinised	<ul style="list-style-type: none"><li>• Officers should be asked questions of fact about the operational aspects of service delivery, the costs of services and the challenges facing services.</li><li>• Executive Members should be questioned about the effectiveness of present policies and practices and about proposals for changes to services.</li><li>• An officer may seek or be asked to assist an Executive Member by providing supporting factual information.</li></ul>

Protocol	Process
Timescale	<p><b>Stage 1 – September to early October</b></p> <p>This is an opportunity for each scrutiny committee to receive a briefing about the overall budget prospects and the challenges facing the council this year and next year. It is also an opportunity for Members to hear and ask about any prospective service changes. This stage precedes the preparation of draft budgets and must therefore be based on information relating to the current year.</p> <p><b>Stage 2 – Executive ‘exclusivity’</b></p> <p>During this period scrutiny committees will not ask for information about next year’s budget or seek to interview Executive Portfolio Holders about options or developing plans for next year’s budget.</p> <p><b>Stage 3 – Scrutiny</b></p> <p>When the base budget and options for change have been produced these will be made available on request and in confidence to the Scrutiny committees. The options for change provided to the scrutiny committees at this stage will have been developed by officers without any input from elected Members. This information will be available to all Members of the Council. If Members or groups of Members request assistance from officers to develop alternative options or packages of options, such information will not be available to the scrutiny committees.</p> <p>The agenda and reports to the budget meeting of the Executive disclose in the public domain all of the proposals in relation to the service budgets and the overall budget position for the forthcoming year. This information will be released to Scrutiny as early as possible in the new year as soon as it is ready. Special meetings of the scrutiny committees can be arranged to take place immediately following the release of this information so that the committees can scrutinise the proposals to be considered at the budget meetings of the Executive and Council so that the views of the scrutiny committees can be conveyed to the Executive and/or the Council.</p> <p><b>Stage 4 – The overall picture</b></p> <p>The overall picture will be considered by Performance Resources and Assets Scrutiny Committee at a meeting to which all Members of the Council will be invited.</p> <p><b>The Council Tax</b></p> <p>The Executive will make its proposal as to the level of the Council tax at their budget meeting. However, consideration of and debate about the tax level should take place at the budget meeting of the Council and not at a scrutiny committee.</p>

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2: Protocol for Scrutiny

Protocol	Stage	Process
Information	Stage 1	The format and content for this stage is unspecified; it will be relevant information provided to committees by Directors and Heads of Service about any significant challenges that will need to be addressed either to comply with the budget for the current year or in framing the budget for next year and about any service changes that may be under consideration.
	Stage 2	No information required.
	Stage 3	<p>Insofar as it is available at that time: Draft capital programme</p> <p>Draft Housing Revenue Account estimates</p> <p>Draft General Fund estimates – specification as for 2003- 04 in terms of rows showing service and subjective analysis and columns showing past comparatives and the build-up of the estimates.</p> <p>Options for changes to the base budget prepared by officers without Member input – reported in private.</p> <p>All the information about service budgets including the Executive’s proposals to amend the base budget.</p>
	Stage 4	<p>All the information about service budgets including the Executive’s proposals to amend the base budget plus the spend and resource equations for both capital and revenue budgets, highlighting where key strategic decisions are still required to be made.</p> <p>Any proposals to address the issues identified. The medium term financial strategy.</p>

### 3. Budget protocol

#### 1. Legal Requirements

- 1.1 Under the Executive system the requirements of relevant legislation, particularly the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (referred to in this Protocol as "the Regulations") must be complied with.
- 1.2 The Regulations require the budget to be presented to Full Council by way of a recommendation from the Executive.
- 1.3 The budget motion may be amended and the usual procedure under Standing Orders relating to amendments will apply. While an amendment can be quite wide ranging it is not permissible for a Member to introduce a different motion recommending a different budget. This would be contrary to the Regulations which require that the budget be recommended to the Council by the Executive.
- 1.4 Under Section 25 of the Local Government Act 2003 the Service Director of Finance Revenues and Benefits ("the Service Director of FR&B") is under a statutory duty to report on the robustness of the estimates made for the purposes of the calculations on which the proposed budget is based and the adequacy of the proposed financial reserves ("the Section 25 report") before the budget decision is taken. The Council must have regard to the Service Director of FR&B report before reaching a decision. This will apply to amendments as outlined below.

#### 2. Procedure

- 2.1 The procedure at Budget Council as at all Council meetings is governed by Standing Orders.
- 2.2 The Executive recommendation on the budget will be moved by the Executive Leader or by another Member of the Executive. The mover of the motion may then be questioned on the motion in the usual way. After questions have been dealt with amendments may be moved.
- 2.3 The speech times set out in Standing Orders will apply. These are: for the mover of the motion to adopt the budget - an unlimited time; for the mover of an amendment to the budget motion - 15 minutes; for seconders and for the right of reply by the mover of the budget - 7 minutes; and for all other speeches - 5 minutes.

#### 3. Questions

- 3.1 After the budget motion has been moved any Member of the Council may ask the mover of the motion a question relating to the motion. Questions may only be asked of the Member who moved the motion and not of any other Member of the Executive or other Member of the Council.
- 3.2 Under Standing Orders a Member asking a question is entitled to a reply (either at the meeting or subsequently in the form of a written reply) unless to reply would involve divulging information prejudicial to the interests of the Council.
- 3.3 A Member who has asked a question may ask supplementary questions. A supplementary question must relate to the original question, or to any answer given to the original question or any previous supplementary question. A supplementary question may not introduce a new matter.

3.4 Under Standing Orders a Member may only ask one question of the mover of the motion, plus any supplementaries. The Mayor has discretion to allow a Member to ask more than one question if the Mayor considers the nature of the business being discussed warrants it. The Mayor is minded to exercise this discretion in relation to questions to the mover of the budget motion to allow the first Member of each of the Opposition Groups who indicates that (s)he wishes to ask a question to ask an unlimited number of questions and supplementaries within a total time of 20 minutes. Afterwards other Members would be able to ask one question each plus supplementaries.

#### 4. Amendments

4.1 After questions have been dealt with any Member may give notice of an amendment (s)he wishes to move, if (s)he has not already done so.

4.2 Amendments will then be dealt with, in the usual way, in the order in which notice has been given.

4.3 Amendments to the budget motion may have significant implications for the calculations used in producing the budget recommendation and for the level of Council Tax and/or the Council's reserves. Therefore, **any** Member wishing to move an amendment which affects any of the proposals in the budget recommendation to any material extent should provide a copy of the amendment to the Service Director of Finance, Revenues and Benefits as early as possible before the meeting, preferably at least 2 days before the meeting, but by **3.00 p.m.** on the **Thursday** preceding the date of the meeting at the latest. The Service Director of FR&B may need to discuss any proposed amendment with his own staff and will need to show the proposed amendment to the Monitoring Officer but otherwise the Service Director of FR&B guarantees absolute confidentiality in relation to any amendment received. The Service Director of FR&B staff and the Monitoring Officer will also maintain this confidentiality.

4.4 The Section 25 report provisions apply also to any amendments which affect the estimates. The Section 25 report provisions do not, however, apply to an amendment which does not affect the estimates, such as an amendment to refer the matter back to the Executive for reconsideration. It should, however, be borne in mind that any resolution of the Council to refer the budget back to the Executive may have cost implications for the Council in that it may cause a delay in the Council Tax billing process.

4.5 If an amendment to refer a recommendation back to the Executive is carried then it is likely that a special meeting of the Executive will be called early in the week or part of a week immediately following the meeting of Full Council with the matter then being reported back to a special Full Council meeting later that week.

4.6 The Section 25 report on the robustness of any amendment, will be submitted by the Service Director of FR&B before the amendment is **voted** on. Debate may take place on an amendment while the Service Director of FR&B is considering the amendment but the amendment may not be voted on until the Service Director of FR&B has reported. If need be there may have to be a short adjournment of the Council whilst the Service Director, FR&B considers the issue.

4.7 The Service Director of FR&B will use a pro forma for his Section 25 report which will be handed to the Chief Executive during the course of or after the debate on any amendment. Before the amendment is put to the vote by the Mayor the Chief Executive will formally report that the Service Director of FR&B has certified that the amendment is robust. In the event that the Service Director of FR&B concludes that the amendment is not robust this will be reported by the Chief Executive. If necessary, the Service Director of FR&B will address the Council on the issue.

4.8 While the figures in the budget proposal may be amended in any way, subject to the Section 25 report by the Service Director of FR&B, an amendment which seeks to give an instruction to the Executive in relation to a specific service or services (e.g. to maintain or discontinue a specific service or budget provision) will not be in order as once the budget has been approved the Executive is free to spend or not spend, and to vire within the rules of the Budget Framework which includes the Scheme of Devolved Financial Management.

## 5. Closure Motions

5.1 Having regard to the nature of the business before the Council it is possible that Members may seek to move one or more closure motions in order to affect the course of the debate.

5.2 Under Standing Orders four closure motions may be moved by a Member during a debate and without notice. These are:-

- that the Council proceed to the next business;
- that the question be now put;
- that the debate be now adjourned;
- that the Council do now adjourn.

5.3 It is important that the circumstances when such motions may be moved and the effect of such motions, if carried, be understood. This is particularly important in the case of the budget debate as the passing of a closure motion can have significant consequences.

### 5.4 **That the Council proceed to the next business.**

If this closure motion is moved the Mayor must decide whether the matter before the meeting has been sufficiently discussed. The matter before the meeting will be the subject of the original motion (as amended if any amendment to the original motion has been carried) but not that of any amendment then under debate. If the Mayor decides that the matter has been sufficiently discussed then the Mayor will give the mover of the original motion his/her right of reply under Standing Order 16.19 and then put the closure motion to the vote. If the Mayor decides that the matter has not been sufficiently discussed then the Mayor will not put the closure motion to the vote and debate will continue. If the closure motion is carried the effect is that the original motion (as amended if an amendment to the original motion has previously been carried) will lapse and the Council will move to the next business on the Agenda. The original motion is then removed from the scope of the meeting and can only be revived by a motion at a subsequent meeting. In the case of the budget this would have serious consequences as the Council would not then be able to vote on the budget and a new Council meeting would have to be convened. The motion could not be revived at any adjournment of the meeting. If the closure motion were put to the vote and lost then debate would continue in the same way as if the closure motion had not been moved.

**5.5 That the question be now put**

If this closure motion is moved the Mayor must again decide whether or not the matter before the Council has been sufficiently discussed. In this case, however, the matter before the Council (i.e. the question) is the immediate subject of the debate at the time that the motion is moved. This means that if the original motion is being debated then the question is the original motion, but if any amendment to the original motion is being debated, then it is the amendment which is the question. If the Mayor decides that the matter has been sufficiently discussed the Mayor must put the closure motion to the vote. If the Mayor decides that the matter has not been sufficiently discussed then the Mayor will not put the closure motion to the vote and debate will continue. If the closure motion is carried the Mayor will give the mover of the original motion his/her right of reply under Standing Order 16.19 and then put the original motion or amendment to the vote. If the question being put is an amendment, once that amendment is dealt with the meeting would then proceed to consider the original motion as usual. If the motion “that the question be now put” is put to the vote and lost then debate continues on the matter being discussed immediately before the closure motion was moved.

**5.6 That the debate be now adjourned**

If this closure motion is moved then the Mayor must, if in the Mayor’s opinion the matter before the meeting has not been sufficiently discussed and cannot reasonably be discussed on that occasion, put the closure motion to the vote immediately and without giving the mover of the original motion a right of reply. If the closure motion is carried then the debate will be continued at the time and on the date specified in the closure motion, or if none is specified, at the next ordinary meeting of the Council. The meeting would then consider the remaining business on the agenda. If the closure motion is lost then debate continues as if the closure motion had not been moved.

**5.7 That the Council do now adjourn**

The Mayor proceeds as at 5.6 above. If the closure motion is put to the vote and carried then the meeting will be adjourned to the date and time specified in the closure motion, or if none is specified, then under the general law the Mayor may fix the date and time. The meeting then concludes.

**5.8 General Points relating to Closure Motions**

If any of the above motions is moved it must be moved without further words or comment. Each of the motions must be seconded in the normal way but the seconder may make no comment. A closure motion may only be moved by a Member who has not previously spoken in the debate on the motion or amendment (if it is an amendment which is the subject of the debate). The first two closure motions set out above may not be amended at all. A motion to adjourn the debate or to adjourn the meeting may only be amended in relation to the time and/or date and/or place of the adjournment. No discussion may take place on the motions and no speeches may be made except where the mover of the original motion has the right of reply (see 5.4 above and 5.5 above).

Mark Turner  
Monitoring Officer

Dev Gopal  
Director of Finance, Revenues and Benefits

## 4. Protocol on the scope of the Housing Appeal & Review Panel

### 1. Purpose

- 1.1 The purpose of this Protocol is to set out the scope of the Housing Appeal & Review Panel and to define the extent of the Housing Appeal & Review Panel's powers in relation to the appeals it considers and what action(s) is(are) or is(are) not available to it in its determinations.

### 2. Scope and Powers

- 2.1 The Housing Appeal & Review Panel determines appeals against decisions made by the Director of Housing. As the matters considered by the Housing Appeal & Review Panel involve determination of appeals by individuals, they are considered in private pursuant to Paragraph 3 or 4 of Part I to Schedule 12A of the Local Government Act 1972 as amended.

Its determinations will be restricted to:-

- upholding the appeal including the giving of its reasons for that action;
- dismissing the appeal including the giving of its reasons for that action;
- deferring the making of any decision pending the receipt of further information; or
- making a recommendation either to the Full Council (or one of its Committees) or to the Executive on an issue arising from any appeal but not related to that specific appeal.

### 3. Limitations

- 3.1 The Housing Appeal & Review Panel is not empowered to make the following determinations:-

- to make any offer of housing;
- to make any recommendation in relation to the matter then subject of the appeal; or
- to make any specific determination in any case other than one of those decisions specified at 2 above.

## 5. Protocol for informing Members of issues relating to their electoral Ward

- 1.1 Ward Members play a key role in communicating with local residents about what the Council is doing in wards or of matters of concern. It is important that ward members have been appropriately briefed. This protocol sets out the type and nature of issues on which officers will ensure that Councillors are appropriately briefed and informed.
- 1.2 It will be the responsibility of each service to inform the relevant Councillors in each ward. Where an issue impacts on more than one ward all relevant Councillors will be informed.
- 1.3 This protocol related to officers informing Councillors. Ward Councillors will continue to raise issues and concerns directly with services for a response.

- **CHILDREN'S SERVICES**

- (a) Reviews of provision including, new services or closures of establishments or services and school closures or amalgamations.
- (b) Changes in procurement of services.
- (c) Outcomes of OFSTED inspections

- **YOUTH JUSTICE**

- (a) Serious incidents involving a young offender subject to supervision where there is likely to be significant public reaction.

- **ADULT SOCIAL SERVICES**

- (a) Major accidents, injuries or violent incidents affecting Social Services staff or property (including fire, flood, vandalism, burglary which affect operational efficiency).
- (b) Controversies (i.e. forthcoming court hearings and inquests concerning clients or staff, deaths, missing clients, service problems or complaints, inter-departmental issues).
- (c) Opening of new premises or a new service.
- (d) Closure of a home, establishment or service.
- (e) Changes/developments to social services delivery (e.g. new structure, re-organisation of services).

- **HOUSING**

- (a) Major accidents, injuries or violent incidents affecting Housing staff, property or tenants (including fire, flood, vandalism, burglary which affect operational efficiency).
- (b) Major works undertaken by housing in an area
- (c) Proposals for new housing development by the HRA
- (d) Proposals being developed by Foxhall Homes Ltd after approval by the Board

- **COMMUNITY DEVELOPMENT**

- (a) Proposals to close community facilities

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### 5: Protocol for informing Members of issues relating to their electoral Ward

- (b) Major accidents, injuries or violent incidents affecting Community Development staff, users or property (including fire, flood, vandalism, burglary which affect operational efficiency).
- (c) Significant issues creating community tension
- **TRANSPORT**
  - (a) Road and bridge design.
  - (b) Publicity statements relating to highway maintenance schemes including proposed consultations and outcomes of consultations.
  - (c) Major highways developments.
  - (d) Traffic Management proposals and objections to proposals.
  - (e) Provision of new pedestrian crossings.
  - (f) Traffic calming schemes.
  - (g) Footway improvement proposals.
  - (h) Footpath maintenance and improvements.
  - (i) Land acquisitions for maintenance schemes or improvements.
  - (j) Cycling schemes.
  - (k) Route hierarchy reviews.
  - (l) Revised bus services, local bus service contracts.
  - (m) Major public transport service changes.
  - (n) Changes to home to school transport arrangements.
  - (o) Definitive Map Modification Order applications.
  - (p) Temporary Road Closures for events
- **ENVIRONMENT AND PLANNING**
  - (a) Issues relating to the presence of travellers:
    - i. Traveller group locations (where known).
    - ii. Placing of facilities at the location.
    - iii. Case conferences under the Traveller protocol.
  - (b) Any local concerns/media interest.
  - (c) Addition or removal of play equipment
- **PUBLIC PROTECTION**
  - (a) High profile enforcement activities, including public enforcement interventions (e.g. prosecution, injunction orders).
- **EMERGENCY PLANNING**
  - (a) Emergencies/Incidents of significance.
- **LIBRARIES**
  - (a) Library closures due to refurbishment or emergencies.

## Part 6 A: Protocols and Conventions

### 5: Protocol for informing Members of issues relating to their electoral Ward

- (b) Changes/reduction in service due to budget pressures or permanent closures of libraries.
- **ADULT EDUCATION**
  - (a) Outcome of inspections
- **CUSTOMER SERVICES**
  - (a) Proposals or changes relating to ward or major customer access arrangements.
- **CORPORATE PROPERTY TEAM**
  - (a) Property disposals (freehold/leases over 7 years)
  - (b) Planning applications on surplus property or for Council developments.
  - (c) Applications for new Safety Certificates at sports grounds.
  - (d) Applications re: common land.
- **REGISTRARS**
  - (a) .Registrar's Office – change of opening hours.
  - (b) Registrar's Office – details of building projects.
  - (c) Applications by venues to be approved for marriage ceremonies.
- **COMMUNICATIONS**
  - (a) Informing local Members of news or media/social media enquiries relating to specific wards or areas
  - (b) Advising members of potential emerging issues on social media
  - (c) Ensuring all three political groups receive all council news releases, including when consultations are launched
  - (d) Ensuring the media line (01582 547402) is monitored 24/7 so members can seek advice on media issues at any time
- **PUBLIC HEALTH**
  - (a) Communicable disease outbreaks
  - (b) Significant health protection issues
- **LUTON RISING (LONDON LUTON AIRPORT LTD) & FOXHALL HOMES LTD**
  - (a) Decisions taken by the Boards of Directors which have a significant potential impact on any Ward or Wards.
- **ALL DEPARTMENTS**
  - (a) All departments should notify local Members if they become aware of any proposals for the closure or opening of community facilities, including post offices, bank branches, health facilities etc.
  - (b) It will be the responsibility of Service divisions to ensure that they notify ward members of relevant issues.

## 6. Protocol on mandatory Member training

1. The Council has determined that for certain Committees, principally Development Management and Licensing Committees, Members appointed to those committees should receive mandatory training to enable them to discharge their duties competently, confidently and in compliance with relevant legislation, regulation and best practice.
2. When a Member is appointed to these committees at a Full Council meeting the Chief Executive's Business and Member Services team should check whether (s)he has already received the appropriate training and, if not, training should be organised on a date before the next meeting of Full Council and preferably before any meeting of the committee to which the Member has been appointed.
3. If the Member does not undertake the training, then, no less than two weeks before the date of the next Full Council, the Democracy Manager will advise the appropriate Group Leader(s) that the Monitoring Officer will submit a report to Full Council providing an opportunity for the Group Leader to replace the Member who has not been trained.
4. The recommendation of the report will be that Council is recommended to review the membership of whichever committee is affected, leaving the relevant Group leader to propose an alternative name.
5. Where the replacement Member has not been trained, this protocol applies.
6. Whilst this protocol will not prevent an untrained Member from serving on the committee to which (s)he has been appointed, it will limit the time they do so and will give a positive incentive for those who want to serve on these committees to undertake the relevant training.
7. Refresher training for all Members on the relevant committees should take place every two years.

## 7. Protocols relating to Development Management Committee

### A. The Right to Speak Scheme at meetings of Development Management Committee

#### 1. Interpretation

"Application" includes any application for planning permission, and any other application, matter or notification which is before the Committee for determination.

"Applicants and Objectors" means the applicants and objectors or such other persons nominated to speak on their behalf, whether professional or otherwise. For the avoidance of doubt, it may from time to time include supporters of an Application.

"the Chair" means the Chair of Development Management Committee.

"the Right to Speak Scheme" means the Right to Speak Scheme as set out in these Rules.

"Working Days" means any day from Monday to Friday (inclusive) which is not Christmas Eve, Christmas Day, Good Friday or any other Statutory Bank Holiday.

#### 2. The Right to Speak Scheme

2.1 The Right to Speak Scheme shall apply to all Applications which are referred to the Council's Development Management Committee for determination. It shall not apply to any Applications, which may be determined by the Council's Head of Planning under the Council's Scheme of Delegation to Officers.

2.2 Applicants, their agents and supporters and Objectors are required to register their request to speak through the Right to Speak Scheme. Members of the Council are not required to register a request to speak but should inform the Chair or the Head of Planning of their intention to do so preferably in advance of the meeting.

2.3 The Right to Speak Scheme shall operate as described in the Rules.

2.4 The Interpretation of the Rules shall be at the sole discretion of the Chair.

2.5 Information regarding the Rules will be published on the Council's website and Applicants will be notified of this when an Application is first received and also on the notification letters sent by the Council to local occupiers on receipt of an Application.

2.6 Members of the Council should not exercise their rights under this Right to Speak Scheme if they have a disclosable pecuniary or personal and prejudicial interest (as defined in the Code of Conduct for Members) in the matter under discussion. In such circumstances, if they still wish to speak they should do so as a private person and register their request to speak in the manner set out in this Scheme. Members are reminded not to use or attempt to use their position as a Member improperly to confer on or secure for themselves or for any other person, an advantage or disadvantage.

#### 3. The Rules of the Right to Speak Scheme

3.1 In the event of receipt of written representations relating to any Application (that may be reported to Development Management Committee and not determined by the Head of Planning under delegated powers) the Planning Case Officer shall inform both the writer and the Applicant of the target committee date.

##### Speaking at the meeting

3.2 The speakers who may address the Committee are:-

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### 7: Protocols relating to Development Management Committee

- Objectors and Applicants must restrict the length of their address to Committee to not more than 5 minutes. If more than one Objector has submitted a request to speak, they will be permitted to speak but all speakers must do so in a total time of 5 minutes. The Applicant and anyone speaking on their behalf or in their support must not exceed a total time of 5 minutes.
- Councillors representing the Ward in which the land or property which is the subject of the Application is located or of an immediately adjacent Ward may address Committee for no longer than 5 minutes each.
- Other Councillors may address Committee for no longer than 5 minutes each, if allowed to do so by the Chair at his or her sole discretion.
- Notwithstanding these restrictions, in any cases considered by the Chair to be of town-wide significance the Chair may at his or her absolute discretion permit a longer overall time period or for each speaker to address Committee individually for a time to be agreed in consultation with the Head of Planning.

#### Registration for the Right to Speak Scheme

- 3.3 The lead officer for the receipt of requests to speak shall be the Committee Administrator for that meeting of Development Management Committee in the Democratic Services Section. Requests to speak on an Application must be received and registered by the Committee Administrator in writing or by telephone at least 5 Working Days before the day of the Committee (that is, in the case of a Committee on Wednesday, by 5.30 p.m. on the preceding Wednesday).
- 3.4 Any person submitting a request to speak, who intends to attend the meeting by remote access, must provide a contact telephone number in case there are technical difficulties with remote access (currently via Teams,) and, where available, an email address. If a telephone number is not provided the request to speak will be regarded as invalid.
- 3.5 Any requests received will be notified, as soon as is practicable after the deadline, to the Head of Planning by the Committee Administrator.
- 3.6 Applicants and Objectors intending to attend the meeting by remote access will be offered a familiarisation "Test Event" which will take place before the meeting of the Committee at a time set by the Committee Administrator. This will give those parties wishing to speak an opportunity to test their systems to ensure they can access the meeting and establish whether they have any technical issues. This will not be a forum to discuss the Application.
- 3.7 If someone submitting a request to speak does not qualify to speak at the Committee Meeting (s)he will be informed by email or telephone no fewer than 4 Working Days preceding the Meeting (that is, in the case of a Committee on Wednesday, by 5.30 p.m. on the preceding Thursday).
- 3.8 Subject to these Rules, requests to speak received after the time specified in Paragraph 3.3 above will not be considered other than in exceptional circumstances. The decision to accept late requests shall be made by the Chair in consultation with the Head of Planning in sufficient time before the meeting takes place to enable the applicant to be informed of the decision.
- 3.9 The Chair shall have the right at his or her absolute discretion to suspend the operation of the Rules in such circumstances as (s)he considers appropriate.

### Attendance at the meeting

- 3.11 All persons who have submitted a valid request to speak in accordance with these Rules must ensure that they are present (either in person or through remote access) in time for the start of the committee meeting (for example, for a meeting starting at the customary time of 6.00 p.m., at 5.45 p.m.). If they are not present then they may lose their opportunity to speak.
- 3.12 The Chair will try to ensure that Agenda items in respect of which there is a valid request to speak and where the speaker(s) is/are present are brought forward for consideration early in the meeting.
- 3.13 In cases where any person who has registered a request to speak is late or does not take up the opportunity to speak, the Committee will proceed to determine the Application. There will be no second opportunity afforded to those who have missed their opportunity to speak and an Application will not be deferred because an Applicant, Objector or Councillor has failed to attend.
- 3.14 All those addressing the Committee must restrict the content of their speech to relevant planning issues raised by the Application.

### Procedure at the Committee Meeting

- 3.15 Democratic Services and Planning will provide the Chair with a list of requests to speak and identify where multiple speakers have registered to speak on a particular item(s).
- 3.16 At the point of considering the Application in respect of which more than one Objector has registered a request to speak, the Chair will ask all concerned if agreement over sharing the 5 minutes has been reached. If agreement has not already been reached the Chair will allow up to one minute for it to be reached. If agreement cannot be reached, the Chair will invite Objectors to speak in the order they registered their interest to speak according to Democratic Services, until such time as the 5 minutes allowed for speaking expires.
- 3.17 The one-minute period referred to above shall not be used to make representations on the Application.
- 3.18 The Head of Planning will present the report on the Application.
- 3.19 The Objector(s) may address the Committee for no longer than 5 minutes in total.
- 3.20 Members of the Committee may ask questions of the Objector(s) to seek clarification of points raised in their speech.
- 3.21 Ward Councillors and those from adjacent Wards and, following them, any other Councillors may address the Committee for no longer than 5 minutes each.
- 3.22 Members of the Committee may ask questions of the Councillors to seek clarification of points raised in their speech
- 3.23 The Applicant or his/her agent and/or supporters may address the Committee, where they have registered to do so, for no longer than 5 minutes. In the event that a supporter to an Application also registers to speak, then the Applicant or his/her agent will be invited to speak first, with any time left of the 5 minutes being allocated to the supporter or supporters to share.
- 3.24 Members of the Committee may ask questions of the Applicant or their agent or supporters to seek clarification of points raised in their speech.

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### 7: Protocols relating to Development Management Committee

- 3.25 The Committee may then ask questions of officers and go on to debate the issues and determine the application with no further involvement from Objectors, Applicants or Councillors in attendance.
- 3.26 Under no circumstances may Objectors, Applicants or Councillors in attendance either cross examine each other or engage in a debate with Council officers or Committee Members.
- 3.27 The time limits for addressing Committee shall be strictly adhered to without exception.
- 3.28 Where any person fails to comply with these Rules (and following a request by the Chair to do so) the Chair shall have the authority at his or her absolute discretion to order their removal from the meeting or to adjourn the Meeting for such period as(s)he considers necessary.
- 3.29 No written submissions may be made by any persons at the meeting of the Committee either in person or online. However, photographs may be submitted to illustrate a point provided that these are received by the Head of Planning not later than 2 Working Days before the meeting.
- 3.30 If an Application which is subject to the Right to Speak Scheme is deferred by the Committee for further consideration, there will be no opportunity to address the Committee for a second time.

## B. Protocol for Member call-in to Development Management Committee

### 1. Introduction and Background

- 1.1 Most planning applications are determined by Planning Officers in line with the Scheme of Delegation as set out in the Council's constitution.
- 1.2 The Scheme of Delegation sets out when officers can determine applications and when they must refer matters to the Development Management Committee.
- 1.3 This delegation allows the Development Management Committee to concentrate on those applications that have the biggest impact upon the Borough or are of relevant interest for public decision making and therefore ought to be scrutinised democratically within the public arena of a Committee Meeting.
- 1.4 However, even when the delegation authorises officers to determine the application, Councillors may request a relevant application to be taken to Committee if they have made a valid request, in time, and have a reasonable and material planning ground upon which to make the request.
- 1.5 Planning decisions are not based on an exact science and rely on informed judgement within a firm policy context. Officers involved in the processing and determination of planning applications must act in accordance with the Council's code of conduct and their professional code of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officer views, opinions and recommendations are developed with suitable training and experience 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 decision of individual councillors or Development Management Committee members.
- 1.6 Applications and development proposals vary in their complexity, and some are particularly contentious and generate considerable local interest. Opposing views are often strongly held by those involved and Councillors need to ensure that they do not favour any person, company, group or locality, nor put themselves in a position where they appear to do so.

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- 1.7 Ward Councillors or, on occasion, other Councillors are likely to be approached by local residents and at time asked, on their behalf, to call-in an application, sometimes on the basis that they consider they will receive a more favourable outcome from the Development Management Committee than by way of delegated officer decision.
- 1.8 It is not the case that just because a member of the public requests a call-in that this should be actioned by Councillors.
- 1.9 It is the responsibility of Councillors to consider whether there are sufficient planning reasons for disagreeing with an officer recommendation of approval that merits intervention of the Development Management Committee.
- 1.10 Councillors approached by residents should not call-in applications simply to appease residents if they do not feel the issues justify the Development Management Committee's attention.
- 1.11 If the issues raised do not appear to justify the attention of the Committee then it is the expectation that Councillors will explain to residents that they cannot justify a call-in of the planning application.
- 1.12 Only where Councillors feel the issues posed warrant a full democratic debate amongst the Development Management Committee should they call-in the application.
- 1.13 Councillors who feel that a call-in is warranted are required to call-in the planning application through a formal set procedure as outlined below. . By calling-in an application Councillors are indicating that they feel the issues are genuine and require debate at the Development Management Committee.
- 1.14 The Councillor calling-in the application is expected to attend the Development Management Committee at which the application they referred is to be discussed to address the Committee and explain their views on the planning application and expand on their call-in reasons. If the Councillor is unable to attend the meeting he or she may appoint a substitute to do so. If the Councillor or his or her substitute does not attend, it should not be assumed that the Committee will defer its consideration of the application
- 1.15 If a call-in is not made following the call-in procedures, the call-in will not be valid and the application will follow the usual routes set out in the Scheme of Delegation.

## 2. How to make a call-in

- 2.1 Councillors must use the online call-in request form. The form has fields that prompt the necessary information required in order to demonstrate that the call-in is made on legitimate planning grounds and provides all of the information that the planning service needs in order to process a Councillor call-in efficiently and effectively and to maintain an auditable and transparent process.
- 2.2 It is important that the form is filled in fully, stating the reasons for the call-in, including the material planning considerations or other reasons as set out at paragraph 2.6 of this Protocol that the Councillor feels warrant scrutiny by the Development Management Committee.
- 2.3 The call-in form will be placed on the application file and will be accessible to view on the Council's website. Councillors should therefore ensure that a member of the public who has approached them to call-in an application is aware that any personal information they provide may be made public when it is incorporated into the call-in form. The Committee report will also give the name of the Councillor making the call-in and the reason for the call-in.

2.4 Material considerations are many and extraordinarily varied. They include all the fundamental factors involved in land-use planning, such as:

- The number, size, layout, siting, density, design and external appearance of buildings
- The proposed means of access
- Landscaping
- Impact on the neighbourhood, and
- The availability of infrastructure

Examples of factors that may be taken into account as material considerations in the decision making process include but are not limited to:

- Planning history of the site
- Overshadowing
- Overlooking and loss of privacy
- Inadequate parking and servicing
- Overbearing nature of proposal
- Loss of trees
- Loss of ecological habitats
- Contamination by a previous use
- Effect on Listed Building(s) and Conservation Areas
- Access and highways safety
- Traffic generation
- Noise and disturbance from the scheme
- Disturbance from smells
- Public visual amenity
- Flood risk

Examples of factors that cannot normally be considered as material planning considerations are:

- Loss of value to an individual property
- Loss of a private individual's view
- Boundary disputes including encroachment of foundations or gutters
- Private covenants or agreements
- The applicant's personal conduct or history
- The applicant's motives
- Potential profit for the applicant or from the application
- Private rights to light
- Private rights of way

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- Damage to property
  - Loss of trade to individual competitors
  - Age, health, status, background and work patterns of the objector
  - Time taken to do the work
  - Noise and other forms of disturbance arising during and solely as a result of any building operations involved in the development
  - Building and structural techniques
  - Matters covered by other legislation and over which planning has no control
  - Alcohol or gaming licence
- 2.5 Most if not every planning application will raise material planning issues, however, Councillors must as part of the call-in request state why the matters warrant scrutiny by the Development Management Committee.
- 2.6 On occasion, Councillors may also feel that an application should be considered by Development Management Committee for the purposes of democratic accountability or that it is in the public interest for the Committee to do so, In making the application, the Councillor should give an explanation of why he or she believes this to be the case.
- 2.7 As noted at 1.14 above, if a call-in is not made following the call-in procedures and on relevant material planning grounds the call-in will not be valid and the application will follow the usual routes set out in the Scheme of Delegation.
- 2.8 Validity of call-ins is determined by the Head of Planning or a Development Management Team Leader delegated in their absence or where the Head of Planning recuses himself for whatever reason in respect of the application that is the subject of the call-in and may be declined, in consultation with the Chair of the Development Management Committee (or the Vice-Chair should the Chair be the Councillor who has called-in the application), if it does not refer to relevant planning grounds or has been inappropriately made.
- 2.9 All call-in requests must be made within 28 days of the application being registered on the Council's website, that is, the validation date. Councillors can choose to be notified when this happens.
- 2.10 The date of the call-in will be the date that the call-in request form is received.
3. **Predisposition, predetermination and bias**
- 3.1 Members of the Development Management Committee need to avoid any appearance of bias or having predetermined their views before taking a decision on a planning application.
- 3.2 Councillors must declare on the call-in form any relationship or actions on their part or impact the application may have on any of their interests declared in the register of interests which could be construed in the public's mind as being liable to bias, predetermination or having a closed mind.
- 3.3 It is the obligation of Councillors to recognise where they have an interest in the application and members' attention is drawn to the Members Code of Conduct which can be found in the Council's Constitution. Failure to declare an interest may put the decision taken by the Development Management Committee at risk of a legal challenge.

## Part 6 A: Protocols and Conventions

### 7: Protocols relating to Development Management Committee

- 3.4 Members who have an interest in the application should not use this call-in procedure. If they wish to speak on the matter if and when it is considered by the Development Management Committee they should register their request to speak as a private person under the provisions of the Right to Speak scheme.
4. **Valid and invalid call-ins**
- 4.1 Upon submitting a call-in form Councillors will receive an acknowledgement email.
- 4.2 The Head of Planning or a Development Management Team Leader delegated in their absence will assess the call-in application and determine:
- If the form has been completed correctly as far as reasonable;
  - That the call-in has been made within the relevant timeframe as set out in this scheme of delegation, including any extensions;
  - That the call in is based on a relevant material planning consideration or another valid reason as set out in this protocol; and
  - That the call-in is valid in all other respects in line with the scheme of delegation.
- 4.3 If the call-in does not fulfil the criteria above the Development Management service will email the Councillor advising that the call-in is not valid as soon as possible, stating the reason(s) why and – if the remaining time before the call-in and the email being received is less than 24-hours, an additional 24-hours will be given to facilitate the submission of a valid call-in. If no further call-in is received, the application will then follow the delegated route, unless a subsequent valid call-in is received within the relevant timeframe.
- 4.4 If the call-in request is valid the Development Management service will confirm this by email.
- 4.5 When a call-in is valid the application will be referred to the Development Management Committee in due course. The Councillor requesting the call-in will be notified of the date in which the item will be taken to Committee and the Councillor is expected to attend or send a proxy Councillor to the Committee Meeting to explain their views on the planning application and expand upon their call-in reasons. By calling-in an application Councillors are indicating that they feel the issues are genuine and require debate at Committee, so they should be prepared to present their views in person.
- 4.6 Note that the application will not always be referred to the Development Management Committee immediately, e.g. where the consultation is still current, where negotiation is ongoing or where further information may be sought.
- 4.7 The application will be written up in accordance with the officer's workload and will be taken to the first Committee where the report can be published on the Agenda in accordance with the Council's timeframe for access to agendas and reports prior to a Committee meeting. This may result in a decision on an application falling outside of the statutory timeframe, which is not ideal; however, it ensures probity in decision making ensuring that call-ins are not a method of expediting an application through the planning system.
- 4.8 The applicant, agent and any objectors will be advised that the application will be decided at Committee because it is the subject of a call-in.
- 4.9 Officers, as a matter of routine, address and consider all relevant material planning considerations. Where during discussion, a Councillor asks a question or makes a comment or assertion that officers believe requires correction or clarification, the officer(s) will, with the Committee Chair's leave, answer or provide the necessary correction or clarification before the Committee votes on the officer's recommendation.

### C. Protocol for Development Management Committee site visits

- 1.1 Where a site is publicly accessible or can be viewed from a public area, the onus is on members of the Committee to make their own site visits in the period between the publication of the agenda and the day of the meeting at which the application will be considered. Provided that arrangements have been made in advance, a Planning officer will be available by phone to answer any questions the member may have.
- 1.2 A member of the Committee may, when the application is being considered by the Committee, propose a motion to defer further consideration until a site visit has taken place and this applies equally to sites that are and are not publicly accessible.
- 1.3 Any such motion must be supported by a valid planning reason and be seconded, If the motion is carried, further consideration of the application will be deferred until the site visit has taken place.
- 1.4 Again, members of the Committee are expected to conduct their own site visits where the site is publicly accessible. Where a site is not publicly accessible, Planning Officers will make the necessary arrangements for a visit and Democratic Services will inform members of the Committee of those arrangements. Transport will not be provided but a Planning Officer will attend to present the application if required and to provide clarification or answer questions relating to matters of fact.