

E - CODE OF PRACTICE: COMMONS REGISTRATION, PLANNING CONTROL, AND RIGHTS OF WAY

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Contents

Section	Title	Page No
1	Introduction	187
2	General Basic Principles	189
3	Pre-application discussions	192
4	Consultation and information	194
5	Lobbying and Bias or Predetermination	195
6	Visual Presentations and Site visits	197
7	Public meetings	198
8	Delegated decisions	199
9	Regulation Committee decisions	201
10	Issuing decisions following Regulation Committee	205
11	Member training	206

Introduction

- 1.1 This Code of Practice sets out the practices and procedures that Members and Officers of Somerset County Council should follow when dealing with planning applications, modifications to the rights of way definitive map, public path orders and applications for the registration of common land (which includes town and village greens).
- 1.2 This document provides guidance on the conduct of Members and Officers, and a description of the procedures which are followed, so that decisions are made – and can be seen to have been made – in a proper and consistent manner. This document covers both the pre-application stages as well as the actual determination of applications.
- 1.3 Each section provides general principles, and then specific reference to commons registration, planning control and rights of way as appropriate.

2. General Basic Principles

- 2.1 **The County Council is committed to open and transparent decision-making.**
- 2.2 **Members have a duty to represent their constituents, but an overriding duty to the wider community.** Whilst Regulation Committee Members may take account of the opinions of others and may express opinions before a decision is taken, they must approach the decision making process with an open mind, listen to the evidence and reach a decision on the basis of the evidence presented. Decisions must not discriminate in favour of any individual, group, company or locality, nor appear to do so. Members who are not members of the Committee are free to represent their communities as they see fit subject to the requirements of the Code of Conduct.
- 2.3 Decisions taken by members and officers (under delegated powers) should only take account of relevant considerations – policy, legislation, guidance, evidence and any other relevant matters as appropriate. **Decisions must be impartial and made for proper reasons** in a clear and open manner which can be easily understood and which promotes public confidence in the process. Decisions should not be taken on the basis of political allegiance or in line with any prior agreement by any party or political group.
- 2.4 The Council's Scheme of Delegation provides for decisions to be made by Regulation Committee unless delegated to the Economic and Community Infrastructure Operations Director who may authorise other officers to act on his/her behalf. Details of delegated powers available to nominated officers are set out in the "Chief Executive and Senior Leadership Team's Scheme of Delegation to Officers". The Regulation

Committee itself may also delegate decisions or related actions (e.g. minor technical editing of conditions) to officers.

- 2.5 In all cases a Case Officer will be appointed – a Rights of Way Officer for matters relating to public path orders, the Definitive Map and to common land/town & village greens, and a Planning Officer for planning matters. The Case Officer’s role is to advise and assist Members of the Committee by providing impartial and professional advice in a clear and objective report. They will ensure that all the necessary information for a decision to be made is provided including a recommendation supported by reasons. Members of the Committee should take the report and recommendation (supported by any presentation at the Committee meeting) made by Officers as their primary reference.
- 2.6 Members of the Committee may raise at any stage in the decision-making process with Officers any issues they consider to be relevant to the decision to be made. However, Members should not otherwise seek to influence Officer recommendations.
- 2.8 Members and Officers will act in accordance with the County Council’s “Protocol on Member/Officer Relations”. Members and Officers will treat each other with respect at all times, and not engage in personal criticism of each other in the course of any meeting. Any concerns about Officer conduct should be addressed to the Economic and Community Infrastructure Operations Director or Group Manager (Environmental and Community Services). Concerns about the conduct of Members should be addressed to the Chief Executive or Monitoring Officer. The County Council has a Whistleblowing Policy which allows for those with serious concerns to come forward confidentially (this is available on the Intranet or from the HR service).
- 2.9 Should any application be submitted in circumstances in which an Officer believes they may have or be seen to have a personal interest, the officer should inform the Economic and Community Infrastructure Operations Director or Group Manager (Environmental and Community Services) and take no further part in the processing or determination of the application.
- 2.10 All Members must observe the Members’ Code of Conduct at all times when undertaking County Council business.

Basic Principles - Commons Registration (including Town and Village Greens)

- 2.11 The County Council is a Commons Registration Authority, and has a statutory duty to consider applications to amend the register and add areas of commons, town or village greens to the Register. Anyone may apply to register land as a town or village green under section 15 (1) of the **Commons Act 2006**. This Act introduces a new statutory

framework for the maintenance of the Commons Register and is being brought into force in stages at present. Applications have to be made in accordance with the relevant regulations which set out the procedure that the Commons Registration Authority should follow in determining applications. Applicants must demonstrate that the land has been used for lawful sports or pastimes 'as of right' without secrecy, force or permission for at least 20 years. Applicants need to submit **all** the evidence they rely on to support the application, so that the registration authority can consider the evidence and whether or not the land qualifies for registration. Evidence can include witness statements, witness forms of evidence and photographs. Neither the Act nor regulations made under it prescribe the way in which the Commons Registration Authority should reach its decision.

- 2.12 Town and village green applications can raise difficult issues of both fact and law, which may sometimes prompt the need to hear witnesses and evaluate the evidence in a quasi-judicial manner. Commons registration is an area which attracts significant attention from the local communities affected. Due to the impact upon landowners and communities of having unresolved applications there is often pressure on the County Council to determine cases expediently, and a new Town/Village Green Priority System was put in place in September 2012 to provide a transparent and fair mechanism for prioritising applications.
- 2.13 It is important that the Regulation Committee are in full possession of the facts when making a decision on applications and it is considered that where the evidence does not at the outset clearly indicate a particular course of action a non-statutory public inquiry should normally be held to determine the facts of the case prior to consideration by the Regulation Committee (the Court of Appeal has stated that in determining applications where there is a dispute, the registration authority should consider convening such a hearing).

Basic Principles - Planning Control

- 2.14 The planning system regulates the use and development of land and seeks to balance the wider public interest against private interests. The County Council deals with "county matter" applications which are those relating to minerals and waste development, and its own development proposals (e.g. a new length of highway, park and ride, school buildings). The exercise by the Council of its planning function is often contentious because planning decisions affect private interests. It is important for public confidence in the planning process that Officers and Members act in a way that is fair and objective and are seen to be doing so. Planning decisions should always be made impartially and for proper planning reasons.
- 2.15 Section 38(6) of the **Planning and Compulsory Purchase Act 2004** states that all applications are to be determined in accordance with the

development plan (i.e. the adopted policy framework) unless material considerations indicate otherwise. This involves the exercise of planning judgement, deciding the weight to be given to relevant considerations balancing these and taking a view on conflicting factors. Account needs to be taken of responses by interested parties and members of the public to consultation on applications prior to a decision being taken.

- 2.16 Following the Nolan Committee report on “Standard of Conduct in Local Government”, and advice given by the Local Government Association, Local Planning Authorities are required to adopt a code of planning practice to show how national guidance notes on conduct are to be applied locally.
- 2.17 Somerset County Council endorses the Royal Town Planning Institute (RTPI) Code of Conduct, and in particular that RTPI Members shall not make or subscribe to statements or reports which are contrary to their own professional opinion. All Officers within Somerset County Council providing planning advice are expected to act in accordance with the RTPI Code whether or not they are RTPI members.
- 2.18 Planning applications submitted by the County Council for its own development (known as “Regulation 3” applications) are determined by the Council and decisions on those applications should be made in exactly the same way as other applications, taking account of the same relevant considerations and demonstrating an impartial, objective and transparent process.

Basic Principles – Rights of Way

- 2.19 Section 53 (3) of the **Wildlife and Countryside Act 1981** places a statutory duty on the County Council to keep the Definitive Map and Statement under continuous review. It is necessary to exercise judgment on the issues, in some instances balancing conflicting elements, including taking into account responses to consultations with interested parties and the public dealing with those issues. **Members of the Committee must consider all the relevant evidence available to them and the advice of Officers on the correct application of the law to that evidence.**
- 2.20 The Council also makes Orders to add, divert and extinguish public rights of way. The statutory criteria for making such Orders have to be followed in deciding whether or not an Order is appropriate.
- 2.21 Public Rights of Way generally run over privately owned land so that proposed changes to the network often prove to be very contentious and may attract significant opposition both from owners and occupiers and those who feel that their rights are being eroded. The successful management of the Definitive Map process relies on Officers and Members of the Committee acting in a way that is not only objective

and fair, but also clearly seen to be so. This applies equally to the determination of applications for public path orders for the diversion or extinguishment of public rights of way.

- 2.22 The Institute of Public Rights of Way Officers (IPROW) is the Professional association representing Rights of Way Officers and promotes good practice. Somerset County Council supports membership of IPROW by its Officers. All Officers within Somerset County Council providing rights of way advice are expected to act appropriately and in accordance with the principles of the professional association whether or not they are members of IPROW.
- 2.23 Proposals for the making or confirmation of public path orders or for the modification of the Definitive Map by the County Council in respect of its own land are treated in the same way as those submitted by private individuals, both in terms of procedure and the assessment of material rights of way considerations or of evidence and the application of statutory criteria.

3. **Pre-application discussions - General**

- 3.1 Pre-application discussions between potential applicants and a suitable Officer can be of considerable benefit to both parties and are encouraged. Such discussions will help to clarify what information should accompany an application, and can often reduce the time taken to make a decision.
- 3.2 It must be clear however that pre-application discussions do not bind the Officer to make a particular recommendation or the County Council to make a particular decision.
- 3.3 Members of the Regulation Committee may take part in pre-application discussions but must demonstrably approach the subsequent decision-making with an open mind.
- 3.4 **If the Member of the Committee has any doubt about the public perception of their position in respect of an item to be debated because of any prior involvement in the item, then they should make a public statement at the meeting confirming that they will approach the decision making with an open mind prior to the debate if he/she wishes to participate in the decision-making process.**

Pre-application discussions – Planning Control

- 3.5 Planning Control has adopted a “Pre-Application Advice Protocol” which provides comprehensive guidance on this important part of the planning process. The Protocol sets out what Somerset County Council can do for applicants, the applicable charges, and what applicants themselves need to do to make sure the process is as

worthwhile and efficient as possible.

Pre-application discussions – Rights of Way

- 3.6 Pre-application discussion can be particularly useful when dealing with modification applications, as they need to be accompanied by all the evidence being relied upon in proving the case.
- 3.7 To encourage applicants to undertake research themselves (which in turn will improve the quality of their modification applications), and to assist them in sourcing the relevant documents, a “pre-application guidance pack” has been prepared. This guidance sets out what applicants themselves need to do to ensure their application complies with the legislation as clarified by the Courts.

4. Consultation and information - General

- 4.1 **The County Council is committed to appropriate consultation and the provision of quality information on planning, commons registration and rights of way matters. The potential impact of these issues on landowners is recognised and as such their engagement in the process is very important.**
- 4.2 All publicity relating to applications will be accompanied by information on how to make representations to the County Council.
- 4.3 The Local Member will be informed of any application(s)/proposal(s) that are to be determined by the County Council as soon as practicable following receipt.
- 4.4 The County Council is committed to transparency and relevant documents are available in County Hall for public inspection during normal office hours. Normally 24 hours notice is required to ensure the relevant documents are available at the appropriate time. The County Council is committed to equality and is aware that some members of the public may be unable to submit their comments in writing. The Council provides alternative ways for the public to make representations other than in writing – see the following link to the County Council website which provides information about accessing documents in other ways:

<http://www.somerset.gov.uk/irj/public/services/directory/service?rid=/wpcontent/Sites/SCC/Web%20Pages/Services/Services/Community/Advocacy>

Consultation and Information - Commons Registration (including Town and Village Greens)

- 4.5 The procedure for applications for towns and village greens is set out in Section 15 (1) of the Commons Act 2006. The procedure for dealing

with these applications is set out in regulations. Copies of the application form and associated guidance are available on the County Council's web site. Once an application is formally acknowledged and accepted the application is published in a local paper, and notices will be posted on site. The Landowner, Parish and District Councils, Local Member and any other person with an interest in the land will be consulted on the application. Copies of the application and supporting evidence are also lodged with the Parish and District Councils. There is a 6 week period for objections/comments.

- 4.6 Any objections to the application will be sent to the applicant for their consideration and comments. There is no set timescale to consider applications for registration. However, it is considered good practice to issue a decision within 3 months subject to no objections being received. Should the matter be complex and objections received then the process will often be subject to an informal hearing, and can therefore take considerably longer.

Consultation and Information - Planning Control

- 4.7 The County Council must publicise all planning applications and scoping requests (relating to the Environmental Impact Assessment Regulations) it receives. The type of publicity varies depending upon the nature of the development proposed and will be carried out in accordance with the **relevant Order in force at the time**. The County Council will publicise applications using notice(s) on the boundary of the site, letters to the nearest neighbours, a newspaper advert to publicise an application, or a combination of the three as appropriate.
- 4.8 The Local Member will be advised of the Case Officer processing the application and the intended determination date. If it is likely the matter will need to be determined by the Regulation Committee the likely date for reporting will be provided. The SCC website contains brief details of all applications received by the County Council.
- 4.9 The County Council will endeavour to determine as many applications as possible within their target time period, unless a Planning Performance Agreement is in place that may set a different timescale for determination.
- 4.10 If amendments are submitted during the period when a valid application is being processed, in most cases, where it is possible to determine the application within its target time period, further consultation will be carried out with relevant consultees and any members of the public who have previously made representations. In some cases – for example where amendments are so significant that they constitute a fundamental change to the application – applicants/agents may be requested to consider submitting a fresh revised application.

- 4.11 Planning applications, subsequent amendments, relevant correspondence from consultees, any letters of representation, planning decisions, conditions, reasons for refusal and any completed planning obligation will be available for public inspection at County Hall during normal office hours. Copies of certain documents will also be available for public inspection at the relevant District Council offices during normal office hours, and on the County Council website.

Consultation and Information – Rights of Way

- 4.12 When consulted the Local Member will be advised of the estimated time the application will take to determine.
- 4.13 Due to the complexity of many Definitive Map modification proposals all relevant documents will be placed in the Members Room at least one week prior to the date of the Regulation Committee, to enable all Members to be fully appraised on all aspects of a proposal and to assist them to make the right decision. “All relevant documents” includes:-
- The Officer’s complete report;
 - Copies of all Rights of Way User Forms (as received) with an indication mark by the Officer where the user has been interviewed;
 - All letters of support and opposition received;
 - Submitted plans and applicant’s presentations; and
 - All other relevant documentation pertinent to the case.
- 4.14 The County Council will endeavour to determine as many modification applications proposals in accordance with it’s stated performance target. The adopted Statement of Priorities establishes the criteria for identifying the priority to be given to Definitive Map modification proposals.
- 4.15 Applications for making public path orders, subsequent amendments, relevant correspondence, including consultation responses and letters of representation, will be available for public inspection at County Hall during normal office hours.

5 Lobbying and Bias or Predetermination

- 5.1. Lobbying is a normal and legitimate part of the political process. Lobbying can be oral or by the circulation of letters or other documents. Those who may be affected by a proposal will often seek to influence the decision by an approach to their local Member or to Members of the Regulation Committee. Members of the Committee should bear in mind that information provided by lobbyists may represent a selective and incomplete picture of the relevant considerations and in some cases misleading or incorrect information may be given.

- 5.2 Members of the Committee should err on the side of caution when lobbied on an issue. Expressing support or opposition prior to an application being formally considered doesn't rule a Member of the Committee out from participating in the decision making process but where a Member considers that there may be a perception that they have demonstrated a bias or predetermination then they should only take part as a member of the Committee in the debate and vote on the application where they can demonstrate in the event of challenge that they considered and participated in the decision making process with an open mind and exercised their vote on the basis of the evidence presented to them. **If there is any doubt the Member should make a public statement to this effect at the meeting about their position prior to the debate if he/she wishes to participate in the decision-making process.**
- 5.3 Members are free to listen to any point of view about a proposal and to provide general guidance to members of the public about procedures such as the rights of members of the public to address the Regulation Committee, or how to make representations in respect of an application. Any member can comment on a proposal in advance of a decision being made but should consider the contents of para 5.1 and 5.2 above before taking part as a decision maker in the decision making process on the item. Members of the Committee should not give any indication that the Council has reached a final decision before an item has been considered by the Regulation Committee.
- 5.4 The fact that a member of the Regulation Committee may also be the local Member for the area of the application site does not debar the Member from taking part in the decision on the application provided the member has not already made up their mind on the matter and does not have a disclosable pecuniary interest or a personal and prejudicial interest. A Local Member who is also a member of the Committee may pass on the views of a particular body of local opinion to the Committee, making it clear that he/she has come to the debate with an open mind (also see point 5.5 below).
- 5.5 It is important that the County Council is seen to be conducting its decision making transparently, impartially and to maintain public trust in the process. Decisions of the Regulation Committee may be challenged in a number of ways either under statute or by way of Judicial Review.
- 5.6 Copies of relevant letters or other correspondence received by Members that are relevant to a particular case should be passed to the Group Manager (Environmental and Community Services) to ensure the contents are taken into account during the processing of the application, and the drafting of any report to the Regulation Committee. Copies of letters or other correspondence received by Members prior to the Regulation Committee but after the production of the report should

always be drawn to Officer's attention to ensure they can take the contents into account and to advise Members accordingly.

- 5.7 Members of the Committee should not place themselves in a position that could lead to the public thinking they are seeking preferential treatment for themselves, a family member, any person with whom they have a close association, or any firm or body with which they are personally connected (see the Code of Conduct for further advice).
- 5.8 Membership of a District, Parish or Town Council which has expressed a view on an application does not prevent a Regulation Committee Member taking part when it comes to be considered by the County Council as the decision making body. The Member must approach the matter afresh. Where an application or other matter for determination comes before Regulation Committee on more than one occasion Members should approach the decision-making process afresh on each occasion. **If there is any doubt, the Member should make a public statement to this effect at the meeting about their position prior to the debate if he/she wishes to participate in the decision-making process.**
- 5.9 Members of the Committee who are concerned about their position in relation to a particular application, should seek the advice of the Council's Monitoring Officer or County Solicitor or their representatives before the meeting of the Regulation Committee at which the application is to be considered.

6. Visual Presentations and Site Visits

- 6.1. Presentations – The Case Officer or other Senior Officer will present a summary of the key issues for each proposal before members debate the matter at the Regulation Committee meeting. Visual aids may be used as part of this presentation to assist with an understanding of the site, its surroundings and the relevant issues. This may include the use of video, photographs, maps, plans, policy statements, and any other information which Officers feel will help Members to reach a fully informed decision.
- 6.2. Site Visits – Planning: In some cases, in order to understand the issues involved in a particular proposal, a formal site visit by Members of the Regulation Committee may be organised. Normally this will take place when the matter is contentious or complex, and/or the impact is difficult to visualise or assess from plans, photographs, video(s) or other supporting information. The decision to hold a site visit will be made by the Regulation Committee or by the Chairman and Vice Chairman in consultation with the Group Manager (Environmental and Community Services). The Local Member will be informed of the site visit, and whilst they have the opportunity to attend they cannot lobby Members of the Committee at the visit. Where an adjoining division is also potentially significantly affected by a proposal, that Local Member

will also be invited to attend the visit. The visit will take place before Committee considers the matter.

- 6.3. The purpose of a Members' site visit is to view the site and its surroundings. Site visits are fact-finding exercises and there should be no discussion on the merits of the proposal nor should any decision be taken.
- 6.4. Committee Members and accompanying Officers will arrive at the site as close as practicable to the scheduled time and will assemble at an agreed location. The Chairman will firstly explain the purpose of the site visit and the procedure to be followed. The Members will then be guided by the Case Officer or another Senior Officer. The Officer will provide a short summary of the proposal, refer to relevant aspects of the site and other matters which are relevant in the determination of the application. Other specialist officers may advise on particular aspects of the proposal. Members have the opportunity to ask questions and to seek clarification of any issues that become apparent during the visit.
- 6.5. If access to private land is necessary, prior agreement will be required. Access to the site should be provided in accordance with good health and safety practice.
- 6.6 Applicants, owners, agents, objectors and other interested parties are able to attend site visits and observe but there should be no lobbying of Committee members.
- 6.7 If no formal visit is being arranged, Members of the Committee may still wish to visit a site on their own. They will need the permission of the owner if they wish to go onto the land and should inform the Group Manager (Environmental and Community Services) and the Chairman of Regulation Committee of their intention. **Members are encouraged to attend the formal site visit whenever possible, and if they are visiting a site on their own they should ensure that all the guidance above (including that in Section 5) is observed.**

Site Visits – Rights of Way

- 6.8 When a site visit relates to an existing public right of way, prior permission to access the land is not necessary but, as a matter of courtesy, owners and occupiers of the land will be notified prior to the visit. If a proposal includes the addition of a new route Officers will try to seek the agreement of the landowner(s) affected prior to the visit taking place. If this is not possible the route will be viewed from the nearest public viewpoint(s).

7. Public Meetings

- 7.1 In **exceptional** and appropriate circumstances the County Council may arrange a public meeting if a matter is very contentious and has

resulted in a significant number of representations from local residents or groups. Such a meeting will not constitute a meeting of the Regulation Committee.

- 7.2 Public meetings will be given wide publicity. The applicant, landowner (if different) and all interested parties, including the Parish or Town Council, the Local Member and those making representations on an application will be individually notified of the meeting.
- 7.3 The chairman of the meeting will begin the public meeting by explaining the purpose and procedures so that all those attending are aware that it provides an opportunity for the application to be explained and for the public to ask questions and make their views known. It will be made clear that no decision will be made at the public meeting and those attending will be informed when the application is likely to be determined by the Committee.
- 7.4 For commons registration matters, the non-statutory public inquiry is the mechanism for holding a public meeting about a proposal, and these will be conducted by an Inspector/independent advisor.
- 7.5 Members may be invited to attend other public meetings, for example, those organised by parish councils, local action groups and by the applicant, regarding a particular planning application. When attending such meetings, members should be mindful of the advice in section 5 of this Code.

8. Delegated Decisions - General

- 8.1 The Council's Scheme of Delegation provides that the Economic and Community Infrastructure Operations Director takes decisions on all planning applications where no significant objection has been raised. If the Director or Group Manager (Environmental and Community Services) considers that an objection is significant, the application is referred to Regulation Committee for determination. The Constitution provides that the Director may authorise other officers to exercise their delegated powers. Details of those authorisations are set out in the "Chief Executive and Senior Leadership Team's Scheme of Delegation to Officers".

Delegated Decisions – Commons Registration (including Town and Village Greens)

- 8.2 Due to the potential impact of registration on the landowner and the community, and the potential for legal challenge, Regulation Committee will determine applications to register a town/village green on behalf of the County Council as Commons Registration Authority. The order of determining applications is led by a Priority System (see paragraph 2.12).

Delegated Decisions – Planning Control

- 8.3 Uncontentious applications which have not attracted a significant planning objection are determined under delegated powers. The same level of professionalism, care and attention is given to these applications, including full reasons for decision. The officer assessment of the proposal is set out in a report in the same way as a report to Committee, identifying relevant planning policy and any other material considerations. There is a recommendation supported by reasons and suggested conditions in the case of a recommendation for approval. The report is signed by the officer exercising the delegated power if the recommendation is to be followed.
- 8.4 If an objection to an application is received and it is not considered to be significant, the application can be determined by the Group Manager (Environmental and Community Services) under their delegated power with the agreement of the Local Member, Chairman and Vice Chairman of Regulation Committee. The Case Officer will write to them summarising the objection and reasons why it is not considered to be significant. A copy of the Officer's delegated report and any copies of plans or photographs will be also be provided in order to assist the Members come to a view. If any one of the Members does not agree the application will be referred to the Regulation Committee for determination.
- 8.5 If the Officer recommendation is to refuse planning permission, the application will not normally be dealt with under delegated powers, even if there have been no objections. There are potential appeal and cost implications of a decision to refuse and as such it is good and established practice to refer the application to the Regulation Committee for determination.
- 8.6 The Group Manager (Environmental and Community Services) has delegated powers to take some decisions relating to the Town and Country Planning (Environmental Impact Assessment) Regulations, to approve details or schemes in accordance with conditions, applications for Certificates of Lawfulness of an existing or proposed use, and other areas of planning control.

Delegated Decisions – Rights of Way

- 8.7 The Regulation Committee will normally determine only those applications which are considered particularly contentious or complex or are to be taken out of turn. Proposals which are determined under delegated powers are normally uncontentious, to which either there has been limited response to consultation or, in the case of Definitive Map proposals, the evidence is clear as to the course of action the County Council as Highway Authority responsible for the Definitive Map and Statement should take.

Statement of Priorities

- 8.8 In the interests of fairness and consistency, modification applications will be dealt with in accordance with the adopted Statement of Priorities. Occasionally an applicant will request their application is taken out of turn and given priority above other applications. Applications will only be taken out of turn in **exceptional** circumstances and the Regulation Committee, having had regard to the Statement of Priorities, will make the decisions on such requests.

9. Regulation Committee Decisions

Committee Papers and Minutes - General

- 9.1 Regulation Committee papers will normally be available at least five working days before the Meeting.
- 9.2 All applications submitted to the Committee will have a full written report from Officers which will include the following:-
- the name and contact details of the Case Officer, local member, reference number and grid reference;
 - a description of the site and the proposal, including reference to any amendments submitted;
 - summary of the history of the site;
 - an accurate summary of the responses to consultation and other representations received;
 - reference to relevant policies and other material considerations and whether the proposal constitutes a departure from the Development Plan;
 - details of the Environmental Impact Assessment (for planning proposals that require them);
 - a logical analysis and assessment of the proposal; and
 - the recommendation together with reasons whether it is for approval or refusal. For planning applications reference will be made to planning policies and any other relevant material considerations, and if the recommendation is to grant planning permission any proposed conditions and whether there is the need for the completion of a planning obligation before the grant of permission. If the report's recommendation is contrary to the provisions of the Development Plan, the material considerations that justify this will be set out and the reasons for decision given. For rights of way and town/village green reports clear reasons for the recommendation will be provided, and information about what happens after the decision is made.
- 9.3 Late Papers - It is important that Members and Officers have a suitable opportunity to consider late comments made, therefore any late papers that are to be submitted for the consideration of the Regulation

Committee following the publication of the agenda/reports should be sent to the Group Manager (Environmental and Community Services) – not sent directly to the Members – and should be received no less than 48 hours before the meeting. This includes late representations received from applicants and members of the public.

Committee Minutes

- 9.4 The minutes of the Committee meeting will summarise the main points of discussion, provide accurate details of the decision made and refer to the information on which this was based. Any new matters raised in late papers or oral presentations to the Committee will be minuted. A summary of the decisions made at the meeting is published in advance of the minutes of the meeting on the Council's website normally within 2 working days of the meeting.

Decision contrary to Officer's recommendation – General

- 9.5 The Officer's report to the Regulation Committee will contain a recommendation but the Committee makes the decision. The Officer's report will have described the relevant issues/evidence, and the reasons for the Officer's recommendation. There will be cases when a majority of Members of the Committee do not agree with the Officer's recommendation and in such an event the Committee should formulate clear reasons for their decision. In some cases it may be more appropriate to defer the determination of an application for further information to be obtained and presented to a later meeting of the Committee. This includes where Members are minded to make a decision contrary to the Officer's recommendation.

Decision contrary to Officer's recommendation – Commons Registration (and Town and Village Greens)

- 9.6 If an application to register a town/village green has been the subject of a non-statutory public inquiry the recommendation of the independent Inspector/advisor appointed will be included in the Officer's report for Regulation Committee to consider.
- 9.7 There is no statutory right of appeal against decisions by the Commons Registration Authority but the High Court can order the amendment of the Commons Register in some circumstances. Decisions can be subject to legal challenge and therefore it is important that Members clearly articulate their reasons for any decision.

Decision contrary to Officer's recommendation – Planning Control

- 9.8 The reasons for the Committee's decision will be the basis of the decision notice, and it must give clear reasons for the decision to the applicant. Advice can be given on the formulation of reasons for a

decision if necessary, and if the decision is to grant planning permission, on appropriate conditions and any need for a planning obligation. This will be minuted.

- 9.9 Decisions must be made solely on planning grounds. It is essential, therefore, that the reasons for a decision can be substantiated by reference to the development plan, national planning policy and any other material planning considerations. If an application is refused and the applicant appeals, there is a real risk that the Council would be found to have acted unreasonably and have a costs award made against it if it cannot demonstrate this.

Decision contrary to Officer's recommendation – Rights of Way

- 9.10 Members will need to give clear reasons for making a decision contrary to an Officer's recommendation because it must be demonstrated that the decision is supported by appropriate evidence, and the reasons why the Committee considers that the statutory criteria are, or are not, met need to be clear. Members should bear in mind that amenity issues such as security, privacy, impact on land management and suitability are not relevant to decisions on Definitive Map applications and should not be taken into account nor given as reasons. Members will be given guidance on the consequences of any potential decision.
- 9.11 In rights of way modification applications, there is the right at different stages of the process for objections or an appeal, as appropriate, to be made by the applicant, the landowner or at a later stage by any member of the public. In the event that an Inquiry is held and the Council is unable to demonstrate its decision was supported by adequate evidence, there may be a successful application by another party for an order that the Council should pay their costs. Individual members could potentially be liable to costs being awarded against them if one of the parties to the order makes an accusation that a particular member has acted 'unreasonably, vexatiously or frivolously' or has been openly prejudiced, and unnecessary expense have been incurred.

Declarations of Interest by Members

- 9.12 The Code of Conduct sets out requirements and guidance for Members on declaring disclosable pecuniary interests, personal and prejudicial interests and the consequences of having such an interest. The Code must be observed and Members should be alert to any changes in their personal circumstances which might affect their interests. Members should act with propriety and should also take care to avoid behaving in a way which might give the appearance of or grounds for suspicion of improper behaviour.
- 9.13 Where a Member decides that they have a disclosable pecuniary interest (dpi) in a particular matter, whether registered in advance of

the meeting with the Monitoring Officer or not, they must disclose that interest and unless they have received a dispensation in advance from the Monitoring Officer, leave the meeting room while the matter is considered and ensure that they take no part in the discussion or decision on the matter. If the dpi has not been registered in advance then the Member must register that interest with the Monitoring Officer as soon as possible after the meeting.

- 9.14 If a Member decides that they have a personal interest in respect of a particular matter they must disclose the existence and nature of that interest in the meeting. If a Member decides that their interest in the matter is also a prejudicial interest, then, unless they have received a dispensation in advance within the Code or from the Monitoring Officer, they should leave the meeting room while the item is considered. A Member with a personal and prejudicial interest in a particular matter may make representations under the provisions for public speaking at meetings of Regulation Committee of this Code but must leave the meeting room when public speaking has ended and before a vote is taken on the particular issue. The responsibility for deciding whether they have a prejudicial interest in a particular case rests with each Member. **Advice can be obtained from the Monitoring Officer or the County Solicitor (or their representative), if required, in advance of a Committee meeting.**

Requests by Members for information

- 9.15 Whenever possible Members should give notice in advance of the meeting of additional information which they consider is needed in order to determine the application or matters which they intend to challenge. This enables Officers to assist with the information before Committee and may avoid a deferral of the matter. At least 24 hours' notice gives officers the chance to respond fully.

Public Speaking at Regulation Committee on an application

- 9.16 Applicants, owners, occupiers, agents, Local Members and others who have made representations will be notified of the date and time of the Regulation Committee meeting considering the application or proposal.
- 9.17 At the Chairman's invitation, members of the public may ask questions and/or make statements in respect of any matter on the Committee's agenda. Petitions may also be presented on any matter within the Committee's remit.
- 9.18 Members of the public wishing to speak at the Committee meeting must register their intention to the Committee Administrator by 12 noon on the last working day before that meeting.
- 9.19 A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been signed.

However, questions or statements about the matters on the agenda for this meeting will be taken at the time when that matter is considered.

- 9.20 Speakers should address comments to the Chairman. Members of the public may only speak during their allocated time and may not take part in the debate. The Chairman can invite Officers to respond to any matters which are raised.
- 9.21 The amount of time speakers will have to address the Committee will normally be restricted to three minutes. If an item on the agenda is contentious, with a large number of people wishing to speak, the Chairman may encourage them to elect a spokesperson(s) who may be allowed to speak for longer. Due to data considerations, access to County Council ICT systems and time constraints presenters are not able to use the IT equipment for their presentation.
- 9.22 The Chairman will decide when the public speaking will end. Speakers will be encouraged to avoid repetition of points made by earlier speakers. The Chairman has discretion on issues relating to the making of oral representations at Committee.
- 9.23 If Members of the public interrupt the meeting or attempt to intervene, the Chairman may adjourn the meeting until the atmosphere is calmer.

Rights of local county councillors to address the Committee

- 9.24 County Councillors can address the Committee, without any advance notification ahead of the meeting, in order to speak regarding a matter on the agenda that relates to their electoral division.

Member Attendance & Decision Making

- 9.25 Prior to each Committee meeting, Committee Members (and substitutes where in attendance) will sign to confirm that they have received appropriate training to consider the business to be determined by the Committee and that they have read the papers for the meeting ahead of taking any decision, in addition to confirming their attendance.
- 9.26 It is important that the Members' decision takes into account all relevant issues, not solely those in the Officers report but also those which may be presented orally or otherwise during the meeting. Therefore, any Member absent from any part of the meeting during consideration of an application should not vote on that application. This does not apply to site visits, which are not part of the formal process of determination.

10. Issuing Decisions following Regulation Committee

- 10.1 The decision of the Committee will normally be sent to the applicant within 10 working days of the date of the Committee Meeting.

- 10.2 Members of the public who have made representations on an application will be informed of the County Council's decision, and specific consultees such as the District and Town/Parish Councils will be sent copies of the decision notice. The Regulation Committee newsletter contains details of all decision notices issued.
- 10.2 Where an application is refused the written notification will include details of how and where to appeal (if available), together with details of all documents that must be submitted with the appeal.
- 10.3 Rights of appeal (where available) will be set out in the relevant statute.

Action taken following the Decision – Commons Registration (and Town and Village Greens)

- 10.4 Once a decision has been made to register a town or village green the details are added to the Register of Commons that is held by Legal Services and can be inspected during office hours. Any amendments to the Register have to be made in the form and content prescribed by the relevant Regulations. Copies of the Register are available on request.

Action taken following the Decision – Planning Control

- 10.5 Most planning permissions are granted subject to conditions. Details submitted in respect of satisfying any condition may be forwarded to specialist officers/bodies for their views but they are not subject to further public consultation. Once the development has been commenced it will be monitored to ensure it proceeds in accordance with the conditions imposed and the approved details. Where a Section 106 planning obligation is required, this will have to be completed before permission is granted.

Action taken following the Decision – Rights of Way

- 10.6 Where the decision is to make an Order, the legal proceedings will be commenced as soon as practicable following the completion of statutory consultations. Copies of Orders made can be sent to members of the public if requested (on payment of an appropriate sum).
- 10.7 Should any complaint regarding the order making process be made direct to a Member, the Member should inform the Rights of Way Team Manager. The Team Manager will ensure that the Member is kept informed as to how the County Council proceeds with the matter.

11. Member Training - General

- 11.1 The need for all Members of the Regulation Committee to receive appropriate training is stressed in the advice issued by the Committee

on Standards in Public Life, the Local Government Association and the Royal Town Planning Institute. Proper training ensures quality decisions are made which are defensible if challenged, and as such is an important part of being a Member of the Committee.

- 11.2 All Members of Regulation Committee must have received the appropriate training before sitting on the Committee and taking part in decision making. Only Members who have received this training are eligible to act as substitute Members on the Committee. All Committee and substitute Members will also receive further training as and when considered necessary and are required to attend. Other Members should also consider attending this training as useful background to their constituency role. The training will aim to be as accessible as possible to members and will offer review, updates and sessions on specific topics e.g. town/village green case law developments.

Member Training – Planning Control

- 11.3 As part of their training Members of the Committee are encouraged to attend arranged visits to development sites in respect of which the Committee decided planning permission should be granted and where the permission has been implemented. It is hoped that this will be helpful in maintaining the quality and consistency of decision-making and will inform reviews of planning policy. Review site visits are open to members of the Regulation Committee, substitutes, the relevant local member and appropriate Officers. The landowner/applicant may be present if access to the site is required, and may take part in any discussion.

Member Training – Rights of Way

- 11.4 It is considered good practice for Members of the Committee to visit a sample of implemented public path orders to view the outcomes of the decisions. Appropriate visits will be arranged, and the Group Manager will also provide training sessions as and when required to update Members on rights of way issues.