ANNEXE TO CONSTITUTION

Part 5

CODE OF GOOD PRACTICE AND GUIDANCE ON THE THE CONDUCT OF PLANNING MATTERS

October 2026

PART 5 – CODES AND PROTOCOLS

CONTENTS

		Page
1	BACKGROUND AND INTRODUCTION	3
2	COUNCILLORS AND OFFICERS – ROLES, RELATIONSHIPS AND CONDUCT	3
3	COUNCILLORS' TRAINING	4
4	PROBITY IN THE PLANNING PROCESS	5
5	PRE-DISCUSSION AND LOBBYING	7
6	PLANNING DECISION MAKING AND RELATED PROCESSES	9
7	DEVELOPMENT PROPOSALS BY THE COUNCIL, COUNCILLORS AND OFFICERS	12
8	PLANNING APPEALS	13
9	COMMITTEE SITE VISITS	13
10	PLANNING OBLIGATIONS	13
11	ADMINISTRATION	14
12	INTERPRETATION	15

PART 5 – CODES AND PROTOCOLS

1 BACKGROUND AND INTRODUCTION

1.1 This document sets out the way in which the Maldon District Council ("the Council") will discharge its planning functions and responsibilities, in particular the determination of planning applications and related matters.

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

1.3 This Guidance supplements the Members' Code of Conduct. It is unlikely that there will be any conflict between the two documents but, if there is, the provisions of the Members' Code of Conduct will take precedence.

1.4 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that the local planning authority, both planning officers and the planning committee, make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not well founded in any way.

1.5 An important reference document is Probity in Planning for Councillors and Officers (April 2013) issued jointly by the Local Government Association and the Planning Advisory Service.

2 COUNCILLORS AND OFFICERS – ROLES, RELATIONSHIPS AND CONDUCT

Please note: There is also a full Member Officer Protocol which should be read in conjunction to this section.

2.1 The successful operation of the planning system relies on mutual trust between Members and Officers, and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so. Councillors and Officers have different but complementary roles. While both serve the public in different ways, Councillors are elected and therefore have a responsibility towards the electorate. Officers are employed by and therefore responsible to the Council as a whole. It follows that although Officers will advise Councillors, both individually and collectively, they may only take instructions from the Council or a Committee. Officers are responsible for the implementation of decisions of the Council and its Committees.

2.2 Both Councillors and Officers are guided by codes of conduct. Councillors have signed up to the Council's own Local Code of Conduct and must have regard to and follow this in all their official actions. Breaches of the Code may result in complaints to the Council's Monitoring Officer who may decide to refer the matter to the Joint Standards Committee. Should a breach of the Code be found, sanctions may be imposed on the Councillor concerned. Breaches of the code may also result in complaints of maladministration to the Local Government Ombudsman.

2.3 Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of this Code may result in disciplinary action by the Institute. The Council also has in place a Code of Conduct for its staff. In addition to these Codes, its Council and Committee Procedural Rules govern the conduct of Council business, and the Protocol on Member/Officer Relations sets out in greater detail and provides guidance on how the working relationship between Councillors and Officers should operate.

2.4 Councillors must not instruct officers to make a particular recommendation nor to take a particular course of action other than through a decision of the Council or one of its committees. Officers must give objective, impartial planning advice, based on their professional judgement and not be compromised or influenced by political considerations. Chartered Town Planners may only advocate their own professional view. Under the Local Government and Housing Act 1989 the Council is able to place restrictions on the outside activities of senior and other designated Officers, particularly in relation to membership of political parties and other Councils.

2.5 The Council's Maldon District Local Development Plan 2014-2029 is approved in the interests of the whole community, following public consultation. It therefore reflects the overall public interest, rather than those of individuals or organisations. Councillors and Officers must support the Council's planning policies and make decisions in accordance with them, unless there are sound planning reasons for not so doing.

2.6 In dealing with planning applications, Councillors will be acting both as representatives of the people and also as decision makers, objectively considering all relevant issues and deciding upon them. Councillors will justifiably take into account matters of public concern, representations they have received and an assessment of what may or may not be appropriate for the area.

2.7 Not all planning decisions are a matter of planning law or policy. Many decisions require an element of judgment, and therefore Councillors need to retain a fair and open-minded approach to the decision-making process. So too will Officers in determining applications under delegated powers. In addition, Officers through their professional responsibilities will be involved in the processing of planning applications including negotiating with and providing assistance to applicants and their agents and also members of the public.

2.8 While Councillors may sense a particular responsibility to serve their Ward electors, they have an overriding duty to the people of the Maldon District as a whole. It follows that since planning decisions are being taken on behalf of the Maldon District Council, they must be reflective of the interests of the District community as a whole. The decision-making process is covered in greater detail in section 6 of this document.

3 COUNCILLORS' TRAINING

3.1 Planning is a complex area, and planning decisions are open to challenge both on appeal and in the courts. It has long been a constant theme of national advice, that all Councillors regardless of their experience should receive adequate training to assist them in the performance of their duties.

3.2 All Councillors will be required to have completed an agreed programme of training prior to being able to take part in decision making in planning applications and related matters. Once this training has been completed, it will remain valid for a period of one year and then refreshed. Councillors who have not undertaken the agreed training programme will be able to participate in the discussion but not vote on planning applications and related matters.

3.3 The training programme in planning will be determined by the Director of Place, Planning and Growth, in consultation with the Chairperson and Vice-Chairperson of the Planning Committee.

3.4 In addition, all Councillors will be given regular updates to keep them informed of important changes in legislation, procedures or practices. Officers will also arrange training on more specialised planning issues, and all members of the Council will be strongly encouraged to attend.

3.5 All Members of the Planning Policy Working Group will be required to have completed an agreed programme of training.

4 PROBITY IN THE PLANNING PROCESS

4.1 Involvement in the planning process creates considerable potential for conflicts of interest, whether it is through an issue directly affecting a Councillor or an Officer, or indirectly in terms of family, friends or possibly an organisation with which they are associated. It is a fundamental principle that decisions should not be made by those who have a pecuniary interest in the outcome. This is vital to avoid public confidence in the planning system being eroded.

4.2 The general rule is that a Councillor or Officer should not use their position to further a private or personal interest, rather than the general public interest, or give grounds for any suspicion. The key issue is whether a member of the public would reasonably think that they might be influenced by their interest.

4.3 Councillors engaged in the determination of planning applications must ensure that they do not use their position improperly to confer on or secure for themselves or any other person, an advantage or disadvantage.

Pre-determination / Pre-disposition

4.4 Councillors taking planning decisions are required to have an ‘open mind’ and listen to all the evidence before taking a decision. The Localism Act 2011 (S25) provides Members with a degree of assurance should they wish to indicate their views in advance without fear of being regarded as having pre-determined the issue and subsequently excluded from the decision making. To do so may still indicate pre-judgment of the application and expose the Council to the possibility of legal challenge.

4.5 The intended effect of the Localism Act provision has still to be determined in the courts, but even if it were held to reduce the prospect of or prevent a legal challenge to the validity of a decision it offers no protection against allegations of maladministration or a breach of the Local Code of Conduct. Members should not make up their minds until they have read the relevant Committee reports, heard the evidence and considered the representations, including any public speakers. It is

important that Members hear all the evidence and representations prior to reaching a decision.

4.6 The concept of pre-determination is different to that of pre-disposition. While carefully wishing to avoid any show of bias of view, it is acceptable for a Member to indicate a view, and even campaign, on planning issues in a general way. This is relevant where Members of the Planning Committee are also Parish / Town Councillors and where they may wish to contribute to a particular discussion at a more local level. Members must still avoid specific statements on how they will vote on individual planning applications or types of planning application prior to the Planning Committee meeting to avoid any impression of bias and pre-determination. If such statements have been made, the Member should declare an interest, withdraw from the Chamber and not take part in the debate or vote.

4.7 Councillors on the Planning Committee who are also members of Town or Parish Councils may speak and vote at Town or Parish and District levels if they are genuinely willing to listen to the later debate and weigh the considerations material to the later decision.

Interests and the Local Code of Conduct

4.8 Membership of another body would constitute a non-pecuniary interest, particularly if it is an organisation whose primary purpose is to lobby to promote or oppose planning proposals. Depending on the degree of involvement there is the prospect of fettering a Councillor's discretion and limiting the ability to participate in the consideration and determination of a planning application.

4.9 Members of the Planning Committee who are also Parish / Town Councillors should be aware of the potential repercussions of their involvement in the consideration of planning proposals at Parish / Town Council level. They should make it clear at that time that any views they may express, including the exercise of a vote, on the comments to be made to the District Council, can only be based on the information available to the Parish / Town Council at that time.

4.10 Members of the Planning Committee not affected by an interest through being Parish / Town Councillors are equally advised to take great care about responding to local opinion and publicly declaring a firm view on a proposal at an early stage. It is important that they do not 'fetter their discretion' but rather leave themselves free to reach a view at District Council level, based on all the facts and information.

4.11 The Local Code of Conduct sets out requirements and guidance for Councillors, for the registration and declaration of interests. These must be followed scrupulously, and Councillors should review the situation regularly. It must be borne in mind that not only should impropriety be avoided but also any appearance, or grounds for suspicion, of improper conduct.

4.12 It is for the individual Councillor to decide whether they have an interest in any matter considered by the Planning Committee, and if so whether that interest is a pecuniary or non-pecuniary or other one. Councillors with a pecuniary interest must not speak or vote in the decision-making process. The Local Code of Conduct explains the effect of interests on participation.

4.13 When declaring an interest at a Committee meeting this should be done at the relevant point in the meeting or as soon during the consideration of the matter that the interest becomes apparent. Councillors should be clear and specific in identifying the item on the agenda in which they have an interest and, if so, the nature of that

interest. Councillors do not need to declare interests that are not covered by the Code of Conduct, e.g. that they know the applicant, agent or an objector, or that they use the premises the subject of the application. If they feel that such an interest is material, they should explain the nature and relevance of it.

4.14 Officers must declare any personal or financial interest in any planning matter before the Council, must not deal with such matters on behalf of the Council and must not give advice to Councillors or other Officers on them. An Officer with a personal or financial interest in a planning matter must withdraw from any relevant committee meeting whilst that matter is discussed. Planning Officers must maintain their professional integrity and should avoid becoming associated in the public mind with representatives of the development industry or environmental or other pressure or amenity groups.

Gifts and Hospitality

4.15 Councillors and Officers should be very cautious about accepting gifts and hospitality and must follow their respective Codes of Conduct.

5 PRE-DISCUSSION AND LOBBYING

5.1 This theme is closely linked to issues covered in the previous Probity section. It is inevitable that Councillors will be subject to lobbying, particularly on planning applications. Again, it is emphasised that great care needs to be taken to maintain the integrity of the planning process, the Council, and the Councillor concerned. Lobbying can lead to the impartiality of a Councillor being called into question and could even cause public mistrust of the Council.

Lobbying

5.2 Lobbying is an attempt to influence Councillors' views in order to achieve a particular decision. It can be by applicants, agents or objectors or by other Councillors. Lobbying may be verbal or by the circulation of letters or documents to all or some Councillors. Planning decisions must be made strictly on the facts and policies relating to each application. Lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of a Councillor being called into question.

5.3 Notwithstanding the provisions of s.25 of the Localism Act 2011 (as mentioned in 4.2 above) when being lobbied, Councillors, and members of the Planning Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such circumstances they should restrict themselves to giving procedural advice, including suggesting to those who are lobbying that they should speak or write to the relevant Officer in order that their opinions can be included in the Officer's report to the Committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having received and considered all the relevant evidence and arguments at the Committee meeting.

5.4 A Committee member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If a Member responds to lobbying by deciding to go public in support of, or against, a particular outcome it would be very difficult for that Member to argue

convincingly when the Committee takes its decision that he / she has carefully weighed the evidence and arguments presented at committee. Although not amounting to a disclosable or other pecuniary interest according to the Code of Conduct the proper course of action for such a Member would be to make an open declaration not to vote. However, this is a severe restriction on the Member's wish - duty, even – to represent the views of the electorate. Councillors should therefore generally avoid organising support for or opposition to a planning application and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the public.

5.5 Councillors should not excessively lobby fellow Councillors regarding their concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

5.6 Individual Councillors should avoid visiting application sites upon the request of applicants or objectors as this may result in those parties attempting to unduly influence the views of Councillors and give the impression of bias. It is important however that the parties are clear in the understanding that the reason for Councillors' involvement in this way is purely to gather information. Where this occurs, Councillors should advise the Director of Place, Planning and Growth and make known their involvement at the relevant Committee meeting at which the application is considered. An approved protocol for site visits organised by the Planning Committee is at **Appendix 1**.

Pre-application discussion

5.7 It is likely that in certain cases discussions will take place between potential applicants and Officers prior to the submission of a planning application. Such discussions may be beneficial in terms of applications being prepared for submission which can then proceed without undue delay to determination. Potential appeals may be avoided by good communication at an early stage of the process. Advice given should be consistent and based on the development plan and material considerations. An approved protocol for Pre-Application Discussions is at **Appendix 2**.

5.8 If Councillors receive information that is relevant to a prospective planning decision, they must declare that information to the relevant planning officers and to the committee. Discussions with applicants, agents or objectors should be reported and any correspondence made available to officers before the committee meeting. Where information has been provided to Councillors or Officers on a confidential basis, it shall not be disclosed to third parties.

5.9 Where Councillors are acting as agents for people pursuing a planning matter with the Council or submitting planning applications on behalf of their employers as part of their job, they should make it clear to their clients that they cannot and will not use their position as a Councillor to influence the outcome of an application.

5.10 Councillors should not meet applicants or agents or third parties in connection with a current application. If Councillors do agree to meet, they should only do so in the presence of a planning officer. Councillors should listen and may ask questions but should not comment nor seek to negotiate. They must make clear that any views they express are personal, rather than those of the Council. A note should be taken of the meeting and placed on the application file. The fact that a Councillor has discussed any proposal with the applicant, agent, supporters or objectors must be made clear when the application is before the Committee for determination.

Planning Enforcement

5.11 Councillors may also become involved in matters that are the subject of a complaint or investigation, and on which enforcement or other legal action may be under consideration. In these circumstances, Councillors are strongly advised to ensure that any action on their part does not prejudice the Council's position, that any enquiries on specific issues are restricted to matters of fact or general case progress and acknowledge that enforcement cases will be dealt with in accordance with the Council's Planning Enforcement Policy (see **Appendix 3**).

Contact with Application Case Officer

5.12 Councillors will often need to contact the Planning Case Officer on development proposals. Contact should however be limited to requests for factual information and the seeking of advice on progress and the nature of consultation responses received. While Councillors are encouraged to discuss their concerns with Officers, they must not attempt to influence or pressure Officers in the making of particular recommendations. If a Councillor is unhappy with the way in which a case is progressing, the matter should be discussed with a senior officer of at least Team Leader level.

5.13 Officers should remain free of any outside influence to make recommendations on planning matters based on their own professional judgements and having regard to all material and other considerations. Councillors should not put improper pressure on Officers for a particular recommendation and as required by the Code of Conduct, should not do anything which compromises, or is likely to compromise, their impartiality.

Availability and Veracity of Information

5.14 Planning applications must be determined on the basis of the documents and information formally submitted. Any submissions from applicants' agents or objectors which are formally received by the Council can properly be taken into account in making a decision. It can cause problems if Councillors are given information or assurances by applicants which are not part of the formal application and which are not, therefore, enforceable. Problems can also arise if Councillors are given information by objectors which may be misleading, untrue or irrelevant. It can be problematical if officers are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Committee about their relevance or enforceability. Councillors should forward such information to the officers for consideration prior to the Committee meeting.

6 PLANNING DECISION MAKING AND RELATED PROCESSES

Gateway Test

6.1 Please note information regarding the Gateway Test will be added, once confirmed.

Committee Decisions

6.2 All planning applications to be determined by the Planning Committee will be the subject of comprehensive, written reports from Officers. These reports will describe the site and the proposal, relevant planning history, development plan policies and other material considerations including, where appropriate, national or local

guidance, and also representations made by statutory consultees, local residents and other interested parties. They will also contain an assessment of the proposal against those considerations and a reasoned recommendation. Reports will contain all the relevant material known at the time when produced and published as part of the Agenda for a particular meeting. Councillors should endeavour to obtain factual information from officers prior to the meeting. This can assist in reducing delays which may be caused by deferment to obtain further information.

6.3 Sometimes applicants and objectors write directly to Committee Members, after the report has been published, commenting on the report, or providing further material. If Planning Services have not been copied into the correspondence, Committee Members should forward any correspondence to the Case Officer as soon as possible.

6.4 Any information material to the decision-making process that is received subsequent to the publication of the Committee Agenda and no later than noon on the last working day prior to the meeting will be reported to the Committee at its meeting. At the meeting, the Planning Officer will advise if the late material raises any matters which should be taken into account by the Committee. The Officer report and last-minute papers should be read and plans / photographs seen before decisions are made. Councillors will also have an opportunity to put questions to Officers and hear the views of their fellow Councillors, the Applicants and other third parties during the course of the debate.

6.5 The law requires that where the Development Plan is relevant to a decision, then that decision should be taken in accordance with it, unless material considerations indicate otherwise (s54A, Town and Country Planning Act, 1990). The Development Plan is therefore the starting point of the decision-making process. Proposals having been identified as amounting to a departure from the Development Plan need to be advertised as such. An Officer recommendation to approve contrary to the Development Plan would need to be justified in the most careful terms, and if the Committee is mindful to approve then the application may then need to be referred to the Secretary of State.

6.6 Planning decisions will not always be dictated by planning law or policy. They will sometimes be matters of fine judgment where the balancing of considerations may be difficult. The Officer's report and recommendation will be founded on adopted planning policy and guidance. Planning Committee Members should take care, if expressing any opinion on the planning applications before them, that they confine their comments to matters which are material planning considerations. Regardless of any political group discussion prior to the Committee meeting, Committee Members must consider applications on their merits and not simply feel bound by decisions made at group meetings. Committee Members cannot be "whipped" to vote in a particular way; this advice is supported by the Local Government Ombudsman. Any decisions taken in this way may be viewed as maladministration and could be subject to legal challenge.

6.7 Where Councillors disagree with the Officer recommendation, a proposition can be made to overturn that recommendation (however, see paragraph 6.7 below). The Committee remains bound by law to make decisions in accordance with the Development Plan and all other material planning considerations. It will therefore need to demonstrate that this requirement has been met in its deliberations, making clear what material considerations are leading it to a decision contrary to professional advice. Failure to do so could result in an appeal against the decision, with potential for an award of costs against the Council in the event that unreasonable behaviour

on its part is found. It could also render a decision subject to legal challenge (judicial review).

6.8 A proposition contrary to an Officer recommendation, together with the reasoning behind it, needs to be clearly presented and will be recorded in the Minutes. It must then be seconded. Before any debate, the Chairperson shall afford the Officers an opportunity to respond to the proposition by way of advice on the implications in terms of risk. If, after debate, the Committee is minded to refuse an application contrary to the recommendation of Officers to approve and without having moved to a vote, then (unless it is agreed upon the advice of Officers that no useful purpose would be served) any further consideration **will** be deferred to enable Officers to consider all relevant implications of that proposed decision and report back to the Committee. This should occur only once as part of an individual application decision process. In any other case, depending on the circumstances and complexity of a proposed decision it may be that Officers will need to consider those implications in greater detail and report back. Any proposal for deferment must be disposed of ahead of any conclusion being reached on the decision itself. The Chairperson will summarise, or cause to be summarised, the salient points of the debate and will seek to ensure the terms of the proposition are clearly understood before putting the matter to the vote.

6.9 Whilst the Committee must clearly set out the reasons for its decisions contrary to Officer recommendation, the final drafting of conditions and reasons will normally be carried out by Officers. Reasons for refusal must be clear, unambiguous and justified by the evidence of the case. Conditions attached to permissions should be necessary, relevant to planning and the proposed development, enforceable, precise and reasonable in all other respects. The text of non-standard conditions and reasons will be determined by the Director of Place, Planning and Growth or other authorised Officer in consultation with the Committee Chairperson (or Vice-Chairperson in their absence) following the meeting. The same mechanism will be used for the updating of any planning conditions agreed by the Planning Committee which may be required through the passage of time between the Committee decision and the issue of a decision notice consequent upon completion of a S106 agreement / planning obligation.

6.10 During Committee Meetings, everything said may be scrutinised by Applicants, objectors, legal advisers and the Press, so Councillors and Officers should be circumspect. Councillors who serve on the Planning Committee should ensure they do not speak to members of the public, or pass or accept notes from them, during the course of a meeting. Councillors who leave the room during the meeting should avoid speaking to any Applicants or objectors / supporters who may be waiting outside the room. Councillors who leave the room during debate or whilst an application is before the Committee will not take part in the debate or vote on that application.

6.11 Given the nature of the decisions to be taken, it is vital that the means by which decisions are reached are clear and understood by everyone present. The role of the Chairperson is therefore important. Although the Council's Procedure Rules allow decisions to be reached through general assent of the Councillors present at a meeting, best practice with regard to decisions on Planning Applications suggests that a show of hands is far preferable.

<u>Decisions delegated to Officers</u>

6.12 Not all decisions on planning applications and related matters will be taken by a Committee. The Council has agreed, and will keep under review, a Scheme of Delegation (alongside the Terms of Reference of Committees) which enables

decisions to be taken by responsible Officers. Decisions taken under delegated powers will be subject to the same process and analysis of the facts and all material considerations, as if they were referred to a Committee for determination. A statement to support each delegated decision will be produced and placed on the case file as a matter of record and also for the benefit of interested Councillors and the public.

6.13 Officers take instructions from Councillors only through a decision of the Council or one of its Committees. In the exercise of delegated powers, Officers may in certain cases be required to consult with individual Councillors and take the views of those individual Councillors into consideration. Officers must always act impartially and advise the Council according to their own professional opinion.

Deferments

6.14 A decision on an application should not be deferred without proper justification. For example, the justification might be to ensure that all the proper information is to hand, and this might include a site visit. The reason for requesting a deferment must be clearly set out by the proposer and recorded in the Minutes.

Public Attendance at Committee Meetings

6.15 All planning applications referred to a Committee for determination will be considered in public session and all background information will be made available for public inspection upon publication of the agenda papers, unless there are specific reasons for not disclosing or publishing 'exempt information' in accordance with the Local Government Act 1972. Applicants, agents and members of the public, representatives of Parish / Town Councils and Ward Councillors who are not members of the Planning Committee may speak on planning applications being considered at the meeting. The Council's public participation scheme is at **Appendix 4**.

7 DEVELOPMENT PROPOSALS BY THE COUNCIL, COUNCILLORS AND OFFICERS

7.1 Committee Terms of Reference provide for the determination of planning applications, where objections have been raised, for the District Council's own development or affecting Council land and applications submitted by Council Members or Officers, by the Planning Committee rather than under delegated powers.

7.2 Such applications will be processed and handled no differently to any other application and the requirements of the Town and Country Planning legislation and ministerial guidance will be followed in the usual way. Officer recommendations and Committee decisions will be made strictly on planning merits without regard to any financial or other gain which might accrue to the Council if the development is permitted, or to other issues which may need more properly to be considered by another Committee of the Council. It is important that the Council not only treats but is seen to treat such applications the same as any other.

7.3 Councillors or Officers proposing to submit a planning application should notify the Monitoring Officer. If a Councillor or Officer submits a planning application, they should take no part in its processing by the authority at any point. It is important that neither Councillors nor Officers take any part in the preparation of Local

Development Plan policy or supplementary planning guidance they may influence, or be seen as influencing, with a view to future planning proposals they may wish to submit.

8 PLANNING APPEALS

8.1 A Planning Appeals Protocol has been approved and is at **Appendix 5**. In the event of a decision taken to refuse contrary to the recommendation of the Officers, the Committee may nominate a Member to assist in agreeing the precise reasons for refusal and with the preparation and presentation of the Council's case should the decision be appealed.

8.2 As referred to earlier, Officers must always act impartially and advise the Council of their professional opinion. Chartered Town Planners are obliged to follow the Royal Town Planning Institute's Code of Professional Conduct. Whilst Chartered Town Planners appearing as the Council's expert witnesses at planning inquiries and hearings have a duty to set out the Council's case, they must, if asked, give their own professional view in accordance with that Code.

8.3 The Council is at risk of an award of costs against it if the Planning Inspector finds that there has been unreasonable behaviour. Common examples of unreasonable behaviour are failure to comply with procedural requirements for inquiries or hearings, failure to provide planning evidence to support reasons for refusal, and failure to take into account relevant policy statements in departmental guidance.

9 COMMITTEE SITE VISITS

9.1 Committee site visits can cause delay and additional costs and should only be used when the expected benefit is substantial. A site visit is only likely to be necessary if the impact of the proposed development is difficult to assess from the plans and any supporting material, including any photographs taken by Officers. Site visits may be arranged following publication of the agenda and before the actual meeting.

9.2 Where requested at the actual meeting, the reason must be clearly set out by the proposer and recorded in the Minutes. All site visits must be carried out in accordance with the Council's agreed guidelines set out in **Appendix 1** to this document.

9.3 Site visits are not part of the formal committee proceedings and are not a forum for debate or making planning decisions. Site visits are not open to the public and should not be used to canvass local opinions or as an opportunity for lobbying or advocacy. Councillors should not express personal opinions during site visits.

10 PLANNING OBLIGATIONS

10.1 Under section 106 of the Town and Country Planning Act 1990, the Council as local planning authority may seek planning obligations in connection with grant of planning permission. Planning Obligations may be given by way of unilateral undertaking or agreement, and for the most part will regulate the use or development of land as distinct from the controls that may be available through the imposition of planning conditions. In addition, they may be used to secure off-site improvements or financial contributions towards local infrastructure provision.

10.2 To avoid any public mistrust or suspicion, it is important that arrangements in connection with planning obligations are operated in accordance with the principle that planning permission may not be bought or sold. The Council must conduct any negotiations and arrangements in a way which is seen to be fair, open and reasonable.

10.3 If a planning obligation is created in isolation or before a planning application is determined, a copy will be placed as required in Part 1 of the statutory Planning Register and therefore made available for public inspection. Similarly, if a planning obligation is created following determination of an application, a copy will be placed in Part 2 of the Register.

11 ADMINISTRATION

Monitoring of Decisions

11.1 The Council should monitor planning decisions taken, on an annual basis, both in terms of quality and consistency. Annually, Councillors will visit a sample of implemented planning permissions to assess the quality of the decisions. The committee should formally consider the annual report and decide whether it gives rise to the need to review any policies or practices. The review may include information identifying the number of cases where Officers' recommendations were not accepted and the outcome of any related appeal decisions. The results of the monitoring will be reported to Councillors along with any recommendations to improve quality, consistency or performance.

Records management

11.2 The planning application files should be complete and accurate containing sufficient information and a record of events so that the decision and the process leading to it can be easily understood. Only "background papers" as defined in the Local Government Act 1972 (and listed in committee reports) are automatically available to the public. These would include, in addition to the application document, associated letters and supporting information, replies from consultees and letters from supporters and objectors. The same principles apply to applications determined under Officers' delegated powers. Such decisions should be as well documented and recorded in the same way as those taken by Committees. These principles apply equally to enforcement and development plan and associated policy matters.

Complaints

11.3 Any complaints received about the way in which a planning application or other planning matter has been dealt with in terms of procedures or fairness will be investigated under the Council's complaints procedures. The fact that someone may disagree with the decision the Council has reached is not a complaint which will normally necessitate investigation, although Officers will explain the reasons for the Council's decision in such a case.

PART 5 – CODES AND PROTOCOLS

12 INTERPRETATION

12.1 The Director of Place, Planning and Growth in consultation with the Chief Executive and a legal Officer, as appropriate, will provide advice or clarification on any matters of a planning nature contained within this document or otherwise. Issues of probity or otherwise requiring interpretation should be referred to the Monitoring Officer.

Appendix 1

MALDON DISTRICT COUNCIL PLANNING SERVICES

GUIDELINES FOR COMMITTEE SITE VISITS

1) Committee site visits may be arranged following publication of the Committee report but prior to the meeting following consultation between the Director of Place, Planning and Growth and the Chairperson of the Planning Committee. Site visits will only be arranged when the Committee at the meeting cannot fully assess the implications of a development proposal on the basis of the information provided at the Committee meeting and individual Members' informal inspections of the site.

2) The time and date will be agreed with the Chairperson of the Planning Committee.

3) The applicant / agent will be contacted to obtain permission to enter the land and to ensure that the time proposed is convenient. The applicant / agent will be advised of the purpose of the visit and the way in which the visit will be conducted.

4) Having confirmed the time and date all Members of the Planning Committee will be advised in writing of the time and date of the visit together with a note (or map) of the suggested assembly point.

5) Upon arrival at the site the visit will be led by the Chairperson or the Vice-Chairperson of the Committee. A Planning Officer will be present with the case file and necessary drawings to illustrate the proposal.

6) In the event of the applicant, agent or landowner being present the purpose of the visit will be explained and the Committee will request that it be allowed to conduct its visit unaccompanied.

7) At no time during the Committee site visit shall the merits of the proposal be discussed with either the applicant, agent, landowner or any third party who may have an interest in the proposal.

8) After the site visit, a note of the Members' attendance will be placed on the file.

9) The application will be referred direct to the next available meeting of the Planning Committee for determination.

(Approved by the Planning and Licensing Committee 22 August 2002 (Minute No.222 refers))
(Updated January 2017, November 2019 and November 2026)

Appendix 2

MALDON DISTRICT COUNCIL PLANNING APPEALS PROTOCOL

1. ROLE OF MEMBERS IN COMMITTEE PLANNING APPEALS

1.1 Householder Appeal

1.1.1 The Member role is a collective Committee responsibility given that the critical factor with householder appeals, which do not involve providing any additional supplementary statements, is to ensure that the Committee's reasons for overturning Officer report recommendations are clear and based on sound planning reasons.

1.2 Member Involvement in Written Representation, Informal Hearing and Public Inquiry Appeals

1.2.1 Where the Committee overturns a recommendation, in addition to agreeing the reasons for refusal it would be sensible for the Committee to identify which member(s), subject to being suitably briefed, should be involved with any subsequent appeal to help strengthen the Councils case. There are three options available to Committee any of which may be selected at the time the Committee decision is taken and thereby recorded in the Minutes. The Member(s) nominated by the Committee to engage with any subsequent appeal include:

- The Chairperson of the Committee.
- The Chairperson of the Committee, and a local ward Member.
- The proposer /or seconder of the motion at the Committee.

1.2.2 It should be made clear that the nominating of a Member is not mandatory and entirely at the discretion of the Planning Committee. Where a Member is nominated, it is important that they understand the nature of the role as set out below, and that their appearance at a hearing or inquiry will be wholly as a representative of the Council to support the case around the Committee's decision.

1.3 Written Representation Appeal

1.3.1 Written representation appeals are the quickest and simplest appeals requiring Member involvement. They require a statement and site visit, but these appeals are usually for smaller scale development such as a single dwelling or change of use.

1.3.2 Where the Committee overturns the recommendation the nominated Member will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due;
- Nominated Member should liaise with the case officer if required to discuss the policies, content to provide the outline for the Council Statement and cost claim (if relevant). Members' comments need to be made in writing to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer. The nominated Member to review the Councils statement and make amendments where required and send back to the Officer.
- Nominated Member to be advised of the date of the site visit.

Appendix 2

1.4 Informal Hearing Appeal

1.4.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due;
- The nominated Member should liaise with the case officer if required to discuss the policies, content to provide the outline for the Council Statement and cost claim (if relevant). Member comments where required need to be made in writing and forwarded to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer or planning consultant. The nominated Member to review the Council's statement and make amendments where required and send back to the Officer.
- Prior to the hearing, a meeting will be held between the Member and case officer and external witnesses and solicitor if necessary to consider the issues and the appellant's case.
- Nominated Member to attend the Informal Hearing either in an observer or as part of the Council team.
- Nominated Member to be advised of the date of the site visit.

1.5 Public Inquiry

1.5.1 Where the Committee overturns the recommendation the nominated Member(s) will be engaged with the following:

- Letter sent to advise the nominated Member about the appeal, the name of the case officer and the date the Statement is due.
- The nominated Member should liaise with the case Officer to discuss the policies, content to provide the outline for the Council's Statement and cost claim (if relevant). Member comments where required need to be made in writing and forwarded to the case Officer.
- Typed statement with any necessary appendices to be prepared by the case officer or planning consultant. The nominated Member to review the Council's statement and make amendments where required and send back to the officer.
- Prior to the Public Inquiry, a meeting will be convened by the Council's legal representative between the Member, the case officer and any external witnesses / experts where necessary to consider the issues / tactics and the appellant's case.
- Nominated Member to attend the Public Inquiry either in an observer or as part of the Council team.
- Nominated Member to be advised of the date and attend the site visit where required.

Appendix 2

1.6 Management of Appeal Process

1.6.1 In managing the Planning Appeal process the Director of Place, Planning and Growth will:

- determine on a case by case basis where it would be necessary to either seek the nominated Member or an external planning consultant to represent the Council at either an Informal Hearing or Public Inquiry.
- wherever practical seek to recover the Council's costs from applicants in preparing for and undertaking an appeal.
- where required, request the local Ward Member assistance in circumstances where local knowledge is paramount and invaluable to the appeal including appeals that may arise from planning enforcement action and a refusal of a Certificate of Lawfulness.

1.7 The Role of Members as Private Individuals and Parish / Town Councillors

1.7.1 In situations where Members have clearly demonstrated a 'closed mind' on a planning application prior to consideration by Committee, they will not be permitted to be involved in the determination of that application or the subsequent appeal statement or process. In this case, or where a member does not support the Council decision irrespective of the type of appeal, a member may decide to make their submissions to an appeal which will be in either a personal capacity only or in their role as a Town / Parish Councillor.

1.7.2 It may be that on occasions electors may expect that their Ward Member(s) will attend a hearing or inquiry to further represent their interests and view. This can be seen as part of the democratic process, and a Ward Member wishing to do so should take the opportunity of first being fully briefed by Officers on all the issues the subject of the appeal.

2. REVIEW OF REASONS FOR REFUSAL

2.1 On occasions during the course of an appeal the Council may formally be requested by or on behalf of the appellant to reconsider its reasons for refusal. Any review shall be undertaken at the level the original decision was made and on report of the Director of Place, Planning and Growth only.

2.2 Where a Committee has not formally reconsidered its reasons for refusal, and there is insufficient time to do so, then in order to ensure the Council minimises its exposure to cost awards against it, the Director of Place, Planning and Growth in managing the appeal process will act in consultation with the Leader of the Council, the Chairperson of the Planning Committee and the nominated Member.

Originally endorsed by Planning and Licensing Committee - November 2012

Appendix 3

ENFORCEMENT POLICY

PLANNING ENFORCEMENT
POLICY, PRACTICE and GUIDANCE

MALDON DISTRICT COUNCIL

March 2018

Appendix 3

Maldon District Council

Planning Policy Enforcement Guidance

CONTENTS	Paragraph	Page
Introduction	1.0	22
Policy Position	2.0	24
Establishing a breach of Planning Control	3.0	26
The Council's initial investigation	4.0	27
Priorities for action	5.0	30
Assessing the complaint	6.0	33
When a breach of planning control is confirmed	7.0	36
Securing compliance with an enforcement notice	8.0	39
Enforcement Appeals	9.0	40
Other Planning Enforcement Powers	10.0	43
Enforcement Policy for Maldon District Council (MDC)	11.0	47
Appendix 1		49
Appendix 2		53

PART 5 – CODES AND PROTOCOLS

Appendix 3

1.0 INTRODUCTION

1.1. The Town and Country Planning Acts give discretion to the Local Planning Authority (LPA) in the exercise of its powers for the control of unauthorised development. This document sets out the context for the operation of the planning enforcement service in Maldon District Council, and the approach that the District Council will take in promoting compliance with planning requirements and dealing with breaches of planning control.

1.2. Paragraph 207 of the National Planning Policy Framework (NPPF) states that:

"*Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary and local planning authorities should act proportionately in responding to suspected breaches of planning control. Local planning authorities should consider publishing a local enforcement plan to manage enforcement proactively in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate the alleged cases of unauthorised development and take action where it is appropriate to do so.*"

1.3. In the light of the above Framework, this policy statement has been prepared to outline the approach that will usually be adopted by the Council in resolving how will deal with unauthorised development and sets out the procedures that will expect to follow. This guide will enable us to work in a proportionate way according to the breach or offence committed.

1.4. This policy and guidance is in accordance with the National Planning Policy Framework (NPPF) by establishing a formal planning enforcement policy which provides a clear statement of the decision-making framework in dealing with alleged breaches of planning control, explaining the Council's enforcement procedures and practices.

Maldon District Council – Enforcement Objectives

1.5. The District Council is committed to effective enforcement of planning control and when considering what action to take, regard will be paid in each instance to the prevailing circumstances and the particular impact of the unauthorised development in question. The Council views breaches of planning control very seriously and has an enforcement team within the Development Management section of the Planning and Regulatory Services to investigate and take action against unauthorised development. The service seeks to achieve the following objectives:

1.6. These objectives are:

- To promote compliance with planning requirements
- To remedy the undesirable effects of unauthorised development
- To bring unauthorised activity under control to maintain the credibility and achieve the purpose, of the planning system
- To strike an acceptable balance between protecting the amenity of the citizens of Maldon and other interests of acknowledged importance, and allowing development to take place
- To provide a service that will pursue pro-active initiatives that would improve the environment and built heritage, safeguard the amenities of the area and support the policies of the development plan

Expediency and the Public Interest

1.7. In considering whether to take any enforcement action, the determining issue for the Council will be whether the breach of planning control causes significant harm and it is in the public interest to take enforcement action.

1.8. Severe harm to public amenity will normally arise through those breaches of planning control which involve unauthorised works to a Listed Building, unauthorised works within a Conservation Area and unauthorised development which is contrary to Development Plan Policies. Action can also be taken to require owners to improve the appearance and condition of land and property, in the interests of local amenity.

The Council's Enforcement Objectives

1.9. An owner or occupier of land can, without a specific planning permission or certificate of lawful use, be at a disadvantage if they subsequently intend to dispose of their interest in the land in question and have no evidence of any permission having been granted for development. The Council appreciates that some developments have occurred over time and have gone unnoticed, but it has to investigate when complaints are made or consider through their own investigations that matters need to be formalised.

1.10. The Council will be responsive to all potential enforcement matters and will pursue the following key objectives:

- Respond to complaints about potential unauthorised development
- Ensure that development is carried out in accordance with planning approvals
- Be fair and take action that is proportionate to the breach or offence, in a responsive, helpful and consistent manner

Appendix 3

2.0 POLICY POSITION National Policy

2.1. The Council is mindful that enforcement action is a discretionary power, but it is important that Local Authorities develop their own policy on enforcement matters. The Council will take action when it is expedient to do so, and any action will be commensurate with the seriousness of the breach of control.

2.2. It is only an offence to carry out development without planning permission in certain instances. Section 73A of the Town and Country Planning Act 1990 (as amended) specifically provides that planning permission may be granted to regularise development already carried out.

2.3. Government Policy Guidance makes it clear that enforcement action should not be taken simply to remedy the absence of a planning permission where development is otherwise acceptable on its planning merits. However, it is important that the Council responds to complaints and seeks to remedy breaches of planning control.

Other Planning Policy Guidance

2.4. Some breaches are more serious than others, and some require immediate action, for example, to prevent the destruction of an historic fabric or structure, an important tree or belowground archaeology. Apart from the seriousness of the breach, the following matters have to be taken into consideration:

- The approved Maldon District Local Development Plan 2014-2029 constitutes the Development Plan for the District.

- Through the Localism Act 2011, the Government has introduced a new tier of planning at the neighbourhood level. Local communities will be able to prepare a Neighbourhood Development Plan for their area which sets out specific planning policies.

- Although they are not part of our statutory development plan, Supplementary Planning guidance Documents (SPDs) (such as planning frameworks and briefs and conservation area appraisal and management strategies) play an important role in our planning decisions.

- The National Planning Policy Framework (NPPF) was published on 27 March 2012. Amongst other things, the new guidance replaces many existing Planning Policy Statements (PPSs), Planning Policy Guidance notes (PPGs) and Circulars. The guidance is a material consideration in planning decisions.

- The Planning Practice Guidance was first published on 6 March 2014. It was a result of a commitment to reform the Planning system to make it simpler, clearer and easier for people to use, allowing local communities to shape where development should go and not go.

- The provisions of the Human Rights Act 1998 when making decisions relating to planning enforcement.

- The principles of the Enforcement Concordat; Good Practice Guide for Small Businesses 1998 are proposed to continue to be applied. These principles include:

    - There will be openness in dealing with business and others.
    - Enforcers will be helpful, courteous and efficient.
    - Complaints procedures will be publicised.
    - Enforcement decisions will be taken in a proportionate manner.
    - Enforcement officers will strive for high standards of consistency.
    - To take into consideration the planning history of the site
    - To seek specialist help from legal, trees and conservation experts.
    - To be aware of relevant appeal decisions and case law decisions.
    - To note information provided by the owner/occupier or interested parties.

2.5 Government has given Councils the primary responsibility of taking whatever enforcement action may be necessary, in the public interest, within their administrative area. A private individual cannot initiate planning enforcement action, so they often look to the Council to act to remedy any concerns that they may raise.

PART 5 – CODES AND PROTOCOLS

Appendix 3

3.0 ESTABLISHING A BREACH OF PLANNING CONTROL

3.1 A breach of planning control is defined in the Town and Country Planning Act 1990 as:

"the carrying out of a development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted."

3.2 A breach of planning control is normally a form of development (a building/engineering operation, use or other activity) that is unauthorised, in that it does not have the benefit of planning permission or other required consent. It includes development not carried out in accordance with a planning permission, and any breach of condition. The fact that something is unauthorised does not, in itself, amount to an offence.

3.3 This contrasts with other elements of planning law, where certain works and activities are in fact offences that can be prosecuted in the courts. These include:

- Unauthorised works to listed buildings
- Unauthorised works to or the removal of protected trees
- Unauthorised advertisements

3.4 Underpinning all of this is a large body of case law. There is a range of powers available to Local Planning Authorities to take enforcement action to deal with breaches of planning control and these are contained in the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act, 1991), the Planning (Listed Buildings and Conservation Areas) Act 1990 and related Regulations

Appendix 3

4.0 THE COUNCIL'S INITIAL INVESTIGATION

How to report a suspected breach

4.1 Most investigations into breaches of planning control result from complaints received from members of the public or from Ward Councillors. The Council can be contacted by letter, using the on-line form or email. It is essential that complainants submit details in writing as this avoids ambiguity and provides the Council with an accurate basis on which to proceed with an investigation.

4.2 Complaints should be addressed to Planning Services Directorate, Maldon District Council, Princes Road, Maldon, Essex, CM9 5DL (or as stated on the Council's web site) who will then ensure it is dealt with by the appropriate investigating officer(s).

4.3 The Council will need the following information before any investigation will take place:

- The precise location of the site or property to which the complaint relates.
- The exact nature of concern, i.e. the potential breach of planning control.
- An indication of any harm caused by the breach.

4.4 The following information will assist the Council in investigating the alleged breach:

- When the breach occurred.
- Any information on the identity of the person(s)/organisation responsible, if known.

Confidentiality

4.5 All investigations are carried out in strictly confidential basis and the investigation team will not reveal the complainants' details. On serious breaches of planning control, which may warrant prosecution, or result in an appeal, the complainant may be invited to give a witness statement. However, such occasions are rare and involvement in those cases is on a voluntary basis.

Anonymous Complaints

4.6 Anonymous complaints will not normally be investigated.

Recording Complaints

4.7 All complaints of potential breaches are entered onto the enforcement records system upon receipt, and a unique reference is created so that progress on each complaint received can be monitored. The name, address and telephone number of the complainant and the details of the complaint are logged.

4.8 The initial investigation will usually involve checking the planning and any building regulation history of the particular site to establish any relevant development history and whether any conditions have been attached to any approval granted. Sometimes it is also necessary to check other records held by the Council such as council tax or business rates, environmental health records or outside organisations in order to get a complete understanding of events.

4.9 A site inspection may prove necessary to establish further facts and evidence. Investigation Officers identify themselves when on site and explain the reasons for the visit. The owner/occupier or people working on the site will be interviewed to obtain factual information and photographs and measurements may also need to be taken. A detailed note is made of the findings in the investigation file, which is used to record all visits and discussions at meetings or on the telephone.

Informing Complainants

4.10 Following an initial acknowledgement the Council will keep all complainants informed of progress at the following key stages of the process including, where relevant:

- The initial assessment, advising what action will be taken
- Any Issue of enforcement notice, or outcome of other action
- If an appeal has been lodged against a formal notice
- Closure of the investigation

Rights of Entry

4.11 Investigation officers have the immediate right of entry onto sites under the provisions of S196A, S196B and 196C of the Town and Country Planning Act 1990, to all non-residential land and buildings. Twenty four hours' notice must be given if access is required to a residential property. If access is denied for any reason, a formal Right of Entry Notice can be served. If entry is subsequently refused, a warrant to effect entry can be applied for from a serving Magistrate.

Obtaining additional information

4.12 In some circumstances, when it has not been possible to establish the facts through normal investigation, or when the co-operation from the owner/occupier is not forthcoming, a formal Planning Contravention Notice (PCN) may be served. This requires the recipient to provide information relating to the breach within 21 days from the date of service of the Notice.

4.13 The complainant may occasionally be asked to assist with the investigation, for example, by keeping a diary of events relating to the breach. This is helpful where problems occur in the evenings or at weekends or outside normal working hours. Such help is voluntary, but the evidence may be crucial when assessing whether a breach has occurred and whether further action is considered expedient to remedy the breach.

4.14 If there is no breach of planning control evident, then an explanation will be given to the complainant, and the file will be closed.

4.15 The impact of some developments and activities are more harmful than others. The Council will nevertheless seek to ensure that all reported breaches of planning control are resolved as quickly as possible. The Council, however, needs to ensure that full and proper consideration is given to the matter and this can often take several weeks, occasionally months, prior to resolving whether a breach of planning control has occurred and determining what further action is merited.

4.16 When there is enough evidence to establish whether a breach has taken place, the investigation officer will advise on the most appropriate course of action or, no further action, in some cases. The investigation officer will contact the complainant to inform them of the outcome.

Appendix 3

5.0 PRIORITIES FOR ACTION

5.1 Some complaints will be more urgent than others and these will need to be given a higher priority including:

- Works to listed buildings, below ground archaeology and works to protected trees that cause immediate and irreversible harm, including any advertisement that may be affixed to them or other operational development such as builders' storage, temporary buildings or parking areas that may be positioned next to them and likely to cause harm
- Councillor, MP enquiries and formal Parish Council complaints
- Operational development/building works where substantial and ongoing loss of amenity is likely to occur
- Fly posting which appears to be intensive and is likely to cause an amenity or public safety issue
- Breaches of planning control that are likely to be immune from enforcement within six months
- Changes of use affecting residential amenity
- Other development (e. g building works/changes of use and untidy condition of land/buildings)
- Building works affecting the character and appearance of a Conservation Area.
- Other advertisements and satellite dishes attached to protected trees or listed buildings

5.2 On receipt of a complaint, it will be prioritised, as discussed below, and a preliminary investigation will be undertaken to establish whether a breach of planning control has, or is likely to, have occurred.

5.3 **Complaints classified as 'Immediate' – investigation within 1-2 working days**

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology and flood defence or drainage works

Appendix 3

5.4 **Complaints classified as 'Urgent' - investigation within 15 working days**

- Councillor or MP complaints and formal Parish Council complaints.
- Operational/building works / change of use / compliance with conditions / obligations affecting residential amenity where ongoing severe neighbour disturbance is being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken

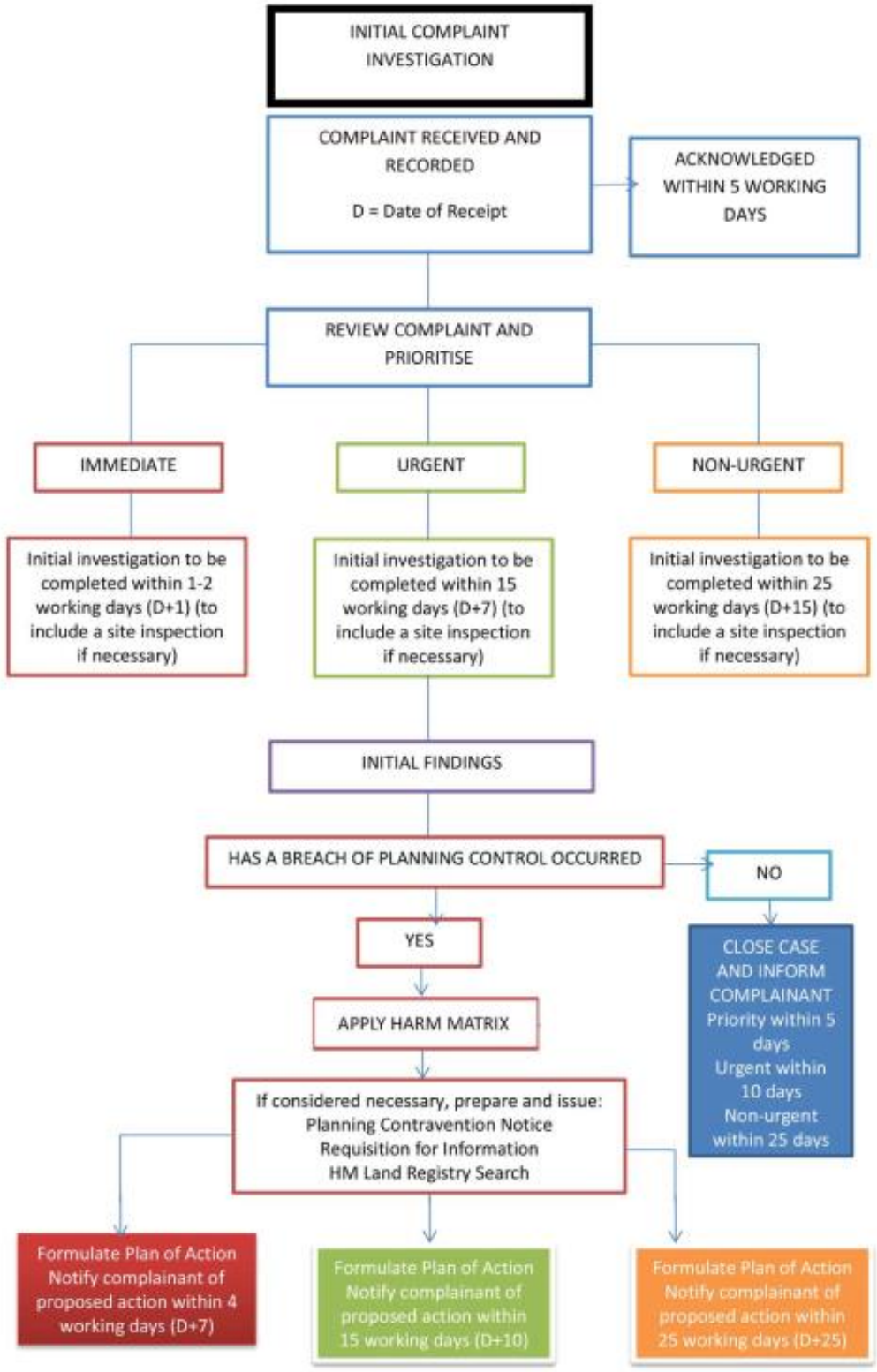
5.5 **Complaints classified as 'Non-Urgent' – investigation within 25 working days**

- Other changes of use
- Other building works/condition of land/compliance with conditions
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

Appendix 3

Initial Investigation Flow Chart

5.6. The following flow chart shows the procedure followed when investigating complaints.



Appendix 3

6.0 ASSESSING THE COMPLAINT

6.1 An important element of the Council's Enforcement Policy is a prioritisation or **Harm Assessment Matrix**. A number of local authorities have adopted an approach which attracts scores depending on the nature and location of an alleged breach of planning control. Maldon Council first adopted this approach in April 2014. Following an initial site visit by an officer, an assessment of the breach is carried out in order to determine what level of officer time will be dedicated to investigating the breach further.

6.2 The matrix sets out a minimum score which needs to be achieved in order to justify further investigations. A score below 5 would normally result in no further action by the Planning Enforcement Team other than an invitation to submit a retrospective in an attempt remedy / regularise the breach.

6.3 As detailed in the next section scores are based on matters of fact i.e. does it relate to a listed building or if the site is in a conservation area, plus matters of judgement i.e. whether the breach would result in irreversible harm or if permission was granted, would the development result in an undesirable precedent.

HARM ASSESSMENT CRITERIA

1. IS THE BREACH?

For **operational development** - are the works ongoing, stopped, complete or stable?

For **change of use -** is the use intensifying, is there an increase in activity, is there a change in appearance/ activity. Is residential occupation involved?

2. HIGHWAY SAFETY

YES = New/altered access to a highway, significant increase in use of access, creates on street stopping and or parking

3. OTHER SAFETY ISSUES

YES = Hazardous materials stored, potential fire risk, interference with safety of other uses/users

4. CAUSING STATUTORY NUISANCE

YES = Where dust, vibration, smell, fumes, light creating adverse physical effect upon health, and or where Environmental Health are taking action

5. COMPLAINANT

Self-explanatory

Appendix 3

6. AGE OF BREACH

Self-explanatory taking into account the '4 year' or the '10 year' rule.

7. DEGREE OF HARM

Is the harm widespread or localised?

Widespread – more than 10 residential properties directly affected, major policy breach, i.e. dwelling in countryside or commercial operation in countryside, can be seen over several tens of metres, pollution is air borne and carried over neighbourhood.

Local – this is where there is harm but only to immediate neighbours affected.

8. IRREVERSIBLE HARM

YES = effectively a planning judgement as to whether retention of operational works or change of use can be permitted without causing permanent damage to the environment or living conditions. Would an application be refused planning permission?

9. FLOOD RISK

Development within its respective Flood Risk Zone [graded 1 (low risk to 3 high risk]

10. BREACH OF PLANNING CONDITION, ANY ARTICLE 4 DIRECTION, OR LIMITATIONS IMPOSED BY PERMITTED DEVELOPMENT RIGHTS

This will be a matter of fact and thus either yes or no

11. AFFECT ON THE CHARACTER OR APPEARANCE OF A CONSERVATION AREA

This will be a matter of fact and degree and a matter of either yes or no

12. LISTED BUILDING OR AFFECTING THE SETTING

This will be a matter of fact and degree and a matter of either yes or no

13. SPECIAL AREAS

This relates to whether the breach lies within a specific special project area such a the Maldon central regeneration area and is part of a specific proactive enforcement project

Appendix 3

14. SENSITIVE AREAS

This will be a matter of fact and thus either yes or no. These special areas include:

Area of Outstanding Natural Beauty (AONB), Site of Special Scientific Interest (SSSI), Ramsar Convention Site, Area of Archaeological Importance, Scheduled Ancient Monument

15. UNDESIRABLE PRECEDENT

A matter of judgement i.e. if similar work or a change of use has occurred would this undermine an important planning principle for the area or cumulatively cause harmful change to character of the area?

Appendix 3

7.0 WHAT HAPPENS WHEN BREACHES OF PLANNING CONTROL ARE CONFIRMED?

7.1. The majority of breaches of planning control are resolved informally and by negotiation with the owner/occupier. Formal action only takes place when it is expedient, and where other means to resolve the problem have failed. **It is a last resort**. The Council will take effective enforcement action when it is essential to protect the amenity of the area, the public or highway safety, and to maintain the integrity of the development management process within the District. The impact of some developments are more harmful than others and therefore action will be in the public interest and commensurate with the breach of planning control.

7.2. Authorised officers will normally decide whether formal notices are justified, in accordance with agreed policies, and action will be approved under the powers delegated to The Director of Place, Planning and Growth or through the relevant Committee / Councillor involvement according to the Council's Constitution at the time.

7.3. When it is clear that there is a breach of planning control, the Council will draw this to the attention of the person responsible and advise them of the most appropriate course of action. These may be:

- If the breach is minor with no significant effects – no further action required.

- If the development is such that it is in line with relevant local plan policies – the Council will usually invite a 'retrospective' application for planning permission.

- If the breach is likely to be immune from enforcement action due to the passage of time – an application for a Certificate of Lawfulness will be invited if permission is unlikely to be granted – the Council will ask for the use to cease, or unauthorised development to be removed. A suitable period of time is allowed, depending on what needs to be done. For example, tenants must be allowed reasonable time to find somewhere else to live.

- As a last resort, formal notices can be issued, such as a Breach of Condition Notice or Enforcement Notice, if it is considered expedient having regard to the development plan policies and other material considerations. This is a discretionary decision, which is made on a case by case basis. The Council must be able to justify taking formal action and be sure that the steps specified in the notice and the period for compliance with each step, are reasonable.

- In extreme cases, the Council can serve a notice to require any relevant activity to cease (a Stop Notice or Temporary Stop Notice) and there is provision to obtain a planning enforcement injunction to restrain an actual or apprehended breach of planning control.

- When a Breach of Condition Notice has been served and has not been complied with, the person who has been served with the notice can be prosecuted in the Magistrates Court.

- When an Enforcement Notice takes effect but is not complied with, any owner/occupier or person who has control of, or has an interest in the land, can be prosecuted in the Magistrates Court.

- Where appropriate, and if other means have not secured a cessation of the breach being enforced against it, the Council will consider using its default powers to take direct action to remedy the breach of planning control, recovering the cost from the owner or placing a legal charge on the land.

- When it is considered expedient not to pursue enforcement action against a breach of planning control, so no further action will be taken.

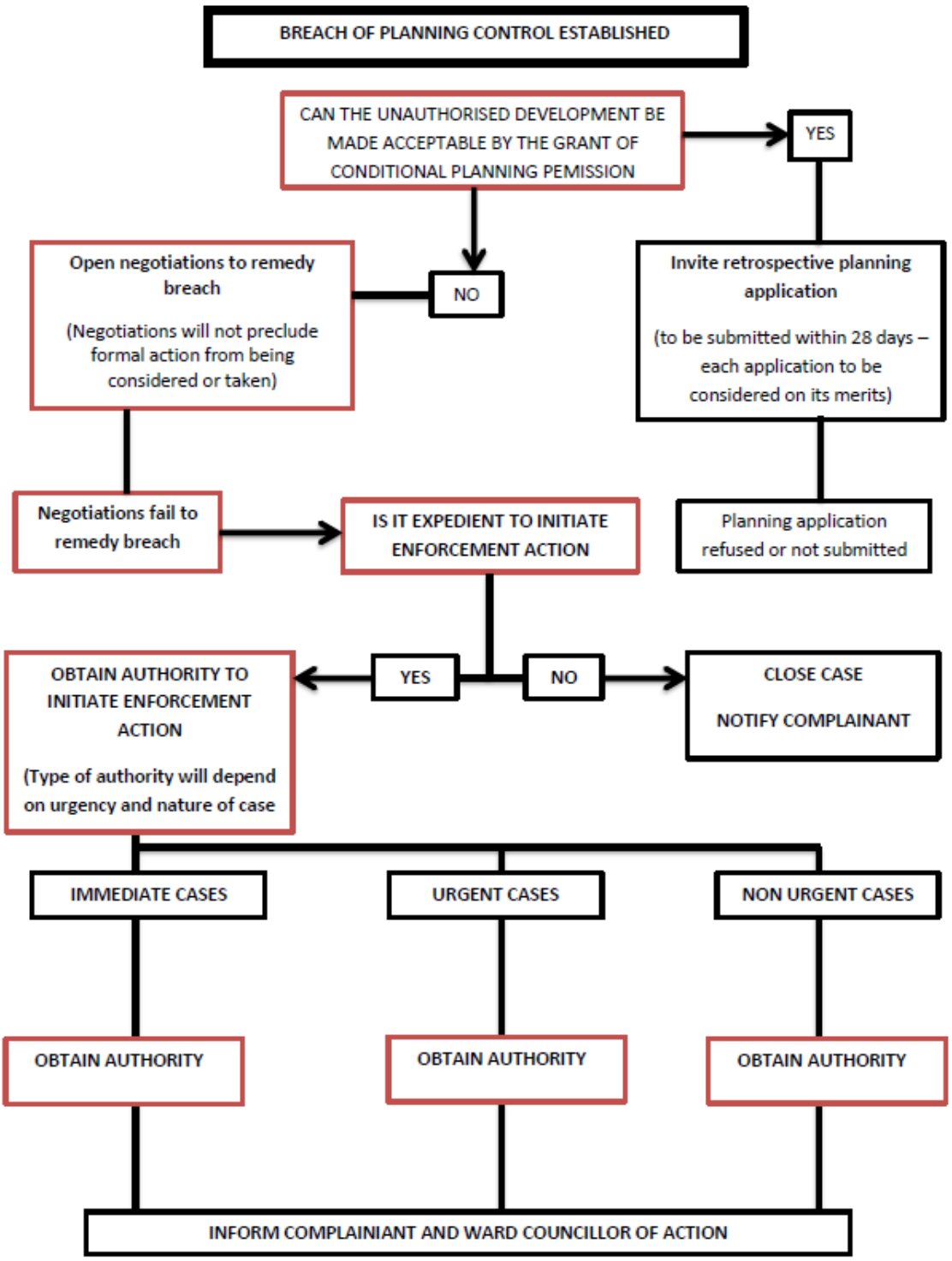
7.4. A robust case supported by evidence needs to be made to ensure any subsequent appeal and prosecution can be supported.

Breach of Planning Control Confirmed

7.5. Once a breach has been established, further investigation may be required and a timetable to be followed to resolve the breach according to its priority classification.

Appendix 3

ENFORCEMENT PROCEDURES FLOW CHART



Appendix 3

8.0 SECURING COMPLIANCE WITH AN ENFORCEMENT NOTICE

8.1 An offence occurs when an owner/occupier fails to comply with the requirement of an enforcement notice.

8.2 The Council will take action when the terms of an enforcement notice have not been complied with. Such action may involve:

- Prosecution of the parties concerned in the local courts
- The issue of an injunction through the court system
- Direct, or 'default' action

8.3 The Council will usually seek to bring the matter to a successful conclusion as quickly as possible through the pursuit of action in the courts. If someone is found guilty of failing to comply with the terms of an enforcement notice, a maximum fine of £20,000 may be imposed by the court. If the Notice is still not complied with, a further prosecution may be brought, and this is likely to continue until the Notice has been complied with.

8.4 The Council will not necessarily withdraw from taking action in the courts once this has commenced, and this may apply even where the breach of planning control may be rectified before the case is heard.

8.5 In the case of a persistent offence against an unauthorised activity, an injunction may be sought through the County Court or High Court. More severe penalties may be imposed in these circumstances if the offence continues.

8.6 In exceptional circumstances, the Council will consider taking direct or default action to remedy a breach of planning control. This may involve the use of contractors to enter a site and physically remove or put right unauthorised building work. Such circumstances are likely to arise for example when the breach of planning control has not been remedied, despite the imposition of fines by the Courts or for continued breaches of planning control. In such cases, the Council will seek to recover its costs, in the form of a charge on the land for example, or by other means.

8.7 If an enforcement notice is served against a development, which is subject to a planning or listed building appeal which is currently under consideration by the Planning Inspectorate, the outcome of such an appeal may be awaited before taking further action to secure compliance with an enforcement notice. When an appeal has been dismissed, compliance with the requirements of an enforcement notice will then be pursued.

8.8 When the Council believes that an enforcement notice has been complied with, the fact will be confirmed to the owner/occupier of the land and to anyone who has complained about the development or activity.

Appendix 3

9.0 ENFORCEMENT APPEALS

9.1 S174 of the Town and Country Planning Act 1990 (as amended) provides a right of appeal against an enforcement notice. The Planning Portal (web site) provides a link to relevant information.

9.2 An appeal must be made before the notice takes effect (normally 28 days after the date of issue of the notice). An appeal cannot be entertained if it is made after the date the notice takes effect.

9.3 An owner, occupier or any other person, who has an interest in the land, even if a copy of the notice has not been issued on that person, may make an appeal.

Grounds of Appeal

Ground A – that planning permission ought to be granted (or a condition or Limitation be discharged)

9.4 This is the 'deemed application' seeking planning permission and requires payment of a fee both to the Council and the Planning Inspectorate. The Council will ensure that the reasons for issuing the notice are well founded and in accordance with the development plan (where appropriate). The Council will then be able to argue on the planning merits of the case that planning permission should not be granted, or that permission should only be granted subject to conditions.

Ground B – that as a matter of fact the alleged unauthorised development has not taken place

9.5 The Council will, by investigating the breach of planning control and through collection of appropriate evidence, ensure that the matter alleged in the notice has occurred and has, in fact, taken place.

Ground C – that the development (if it has taken place) does not constitute a breach of planning control

9.6 Enforcement action will only be taken when it appears to the Council that there may have been a breach of planning control. Before taking action, the Council will consider:

- Whether the alleged breach constitute development
- If it does constitute development, does it need planning permission
- Whether planning permission been granted

Ground D – that the time limit for taking enforcement action has passed

9.7 When there is any doubt about when the breach of control first took place, before taking enforcement action, the Council will initiate an investigation to establish when the breach first occurred. This investigation may include the service of a Planning Contravention Notice, a Requisition for Information and an HM Land Registry search. Evidence may also be sought from neighbours, previous owners and any other person with personal knowledge of the history of the site. This will ensure

from the evidence available that the development has not achieved immunity from enforcement action due to the passage of time.

9.8 The immunity from taking enforcement action will be four years in respect of unauthorised building works or for the making of a material change of use of any building for use as a dwelling house, or non-compliance with a planning condition which prohibits the use of a building as a dwelling house.

9.9 In all other cases, the period from immunity will be ten years.

Ground E – that copies of the notice were not properly served

9.10 The Council will take all reasonable steps to issue a copy of the enforcement notice on every person with an interest in the land as required by the legislation based on the information obtained by a Requisition for Information, a Planning Contravention Notice or HM Land Registry search or by such other means necessary.

9.11 Notices will be issued by Recorded Delivery mail or by hand.

Ground F – that the steps required by the notice exceed what is necessary to remedy any injury to amenity

9.12 The Council will ensure that the steps required to be taken are both necessary and the minimum required in order to remedy the breach of planning control. The steps will be stated clearly so that there is no doubt about what has to be done.

Ground G – that the period for compliance is too short

9.13 The period for compliance will be a reasonable period having regard to the particular circumstances of the case and the actual or potential harm being caused to the amenity of the area by the unauthorised development.

9.14 When particular personal family hardship will result in order to comply with an enforcement notice, the Council will ensure an adequate period for compliance is granted.

An appeal made under Ground A

9.15 This ground of appeal relates solely to the planning merits of the case. If an appeal is successful under this ground, planning permission can be granted for the development enforced against.

An appeal made under Grounds B, C, D and E

9.16 An appeal made under any or all of Grounds B, C, D and/or E are grounds often referred to as the ‘legal grounds’ of appeal.

An appeal made under Grounds F and G

9.17 An appeal made under either Grounds F and/or G are not concerned with the planning merits of the case or legal issues but regards to the requirements of the Notice itself.

Appeal Methods

9.18 An appellant may elect an appeal to be heard at a public inquiry, an informal hearing or by way of an exchange of written statements.

9.19 It is the Planning Inspectorate who will make the final decision as to the appropriate method of appeal.

9.20 Unless complex planning issues or legal issues are involved, the Council will normally request enforcement appeals to be dealt with by way of an exchange of written statements.

Award of Costs

9.21 Costs can be awarded against both parties whichever method of appeal is used if either the Council or the appellant is found to have acted unreasonably in accordance with statutory procedures.

9.22 When it appears to the Council that an appeal has been made simply to delay or prolong the requirements of a notice taking effect, or if Ground A has been cited where the development is clearly contrary to planning policy, or some other ground is cited which clearly has no chance of success, the Council will apply for an award of costs against the appellant.

Appendix 3

10.0 OTHER PLANNING ENFORCEMENT POWERS

10.1 Some breaches of planning control are the subject of separate legislative codes.

10.2 These include:

- Listed Buildings
- Advertisements
- Trees
- Condition of land or buildings affecting the amenity of an area

10.3 Where the legislative requirements are the same, this enforcement policy will form the basis for any action taken by the Council on these matters.

Listed Buildings

10.4 The Council attaches particular importance in ensuring that any alterations to listed buildings are properly authorised. The statutory provisions for the preservation of buildings of special architectural or historic interest are contained in the Planning (Listed Buildings and Conservation Areas) Act 1990. It is an offence under Section 9 of the Act to carry out unauthorised works to a listed building which would affect its character. The owner of a listed building or those who have an interest in the property or who have carried out the works may be prosecuted by the Council irrespective of whether consent is later obtained retrospectively or the unauthorised works later made satisfactory. A person found guilty of an offence may be liable to a fine of up to £20,000 and/or a term of imprisonment of up to two years. There is no time limit upon the District Council to pursue listed building enforcement action.

10.5 A Listed Building Enforcement Notice may also be served requiring remedial works to the building within a certain time scale. There is a right of appeal but failure to comply with the Notice is an offence, where a penalty of up to £20,000 may be imposed.

Advertisements

10.6 The display of advertisements is controlled under the Town and Country Planning (Control of Advertisements) Regulations 1992 (as amended) and the Anti-Social Behaviour Act 2003 (part C) Penalty Notices for Graffiti and Fly Posting.

10.7 Advertisements are divided into three main groups:

- Those advertisements that are expressly excluded from local planning authority control
- Those that have ‘deemed consent’ so that the local planning authority’s consent is not required provided the advertisement is displayed under certain rules
- Those advertisements that require the local planning authority’s consent

10.8 The rules are complicated and seek to control amongst other things, the height, size and illumination of the advertisement.

10.9 Any person who displays an advertisement, without consent, is acting illegally. It is open to the Council to take a prosecution in the Magistrates Court for an offence under Section 224 of the Town and Country Planning Act 1990 (as amended).

10.10 The Council can issue a Fixed Penalty Notice in relation to the display of an advertisement to any person that there is reason to believe that that person personally affixed or placed the advertisement to, against or upon the land or object on which the advertisement is or was displayed under the Anti- social, Crime and Behaviour Act 2014; this is discussed further below.

10.11 Unless the offence is particularly flagrant or repeated, the planning authority may not initially consider it necessary to prosecute for an advertisement offence. Instead, they may invite the advertiser to apply for the consent required and if refused, there will be a right of appeal. The continued display of an advert after consent has been refused, and any subsequent appeal dismissed, may well result in prosecution. The maximum fine on conviction is currently £1,000 with an additional daily fine of one-tenth of the maximum penalty of a continuing offence.

10.12 Any display of an advertisement without consent is an offence which is immediately open to prosecution, or in some cases to the removal or obliteration if the Council decide to take such action. If the advertisement identifies the advertiser, the Council must give 48 hours before obliteration or removal takes place, where the regulations apply.

10.13 Some advertisement may be displayed on highway land in which case there are powers that Essex County Council (ECC) has to remove these directly. The Council will seek ECC to remove these where complaints are received but in some cases, such as fly posting joint action may be necessary.

Action available to Councils either as the Local Planning Authority (LPA) and / or the Highway Authority

10.14 The Council could take a number of actions including:

1. Remove the signs directly (with or without an attempt to attempt to recover the costs)
2. Proceed to prosecute in the magistrate's court
3. Where the signs are on highway land or fixtures seek Essex County Council to take direct action using their highways powers.
4. Possible use of a Fixed Penalty Notice under the Anti- social, Crime and Behaviour Act 2014.
5. Do nothing (depending on the scale of the matter)

10.15 The only two reasons local authorities can take into account in dealing with advertisements under the Advertisement Regulations are public safety an amenity.

10.16 Failure to comply with these conditions will allow the LPA to immediately serve a removal notice giving a reasonable time for such signs to be removed otherwise the LPA could undertake the work and recover the costs.

10.17 **Removal (as the Local Planning Authority):** Local planning authorities have specific powers to deal with unauthorised advertisements under planning legislation and allows local planning authorities to remove and dispose of any display structure which, in their opinion, is used for the display of illegal advertisements. This provision does not apply to signs in a building to which the public have no right of access. Where possible, the owners / advertisers should be notified before removal.

10.18 **Prosecution (as the Local Planning Authority):** The local planning authority is empowered to prosecute those who display advertisement signs without consent including the beneficiary of such advertisement signs. The fine for displaying without consent is up to £1,000 (level 3 of the standard scale) and £100 per day as fine if after conviction, the advertisement continues to be displayed. A person shall be deemed to have display an advertisement if is:

(a) The owner of the property or the occupier of the land on which the advertisement is displayed

(a) The advertisement gives publicity to his goods, trade, business or other concerns

10.19 Notices should be served on both the owner / occupiers of land on which the advertisement is displayed as well as the beneficiaries of the advertisement unless:

(a) They have no knowledge of the advertisement displayed

(b) They have not given consent to the advertisement displayed

10.20 The local planning authorities do not need to give notice of removal if the advertisements are displayed on land or properties belonging to the Council.

10.21 **Removal (by the Highway Authority).** The Highway Act 1980 makes provisions for Highway Authorities to remove advertisement signs, painting, etc. affixed to the surface of Highway or any other structure in the Highway. Illegal signs can be removed without giving notice to the perpetrators.

10.22 **Prosecution (by the Highway Authority).** Prosecution under the Highway Act1980 attracts a fine of up to £1000.

10.23 **Anti – social behaviour orders (ASBOs).** This was new measure introduced in 1999. Graffiti and flyposting are defined as an offence and a Penalty Notice can be served. 14 days' notice is required to be given of impending action. This type of action is considered more appropriate where there is an extensive problem of illegal fly posting.

Trees

1.24 Under Section 198 of the Town and Country Planning Act 1990, the local planning authority has the right to make provision for the preservation of trees in their area by issuing a Tree Preservation Order. Any unauthorised works to such protected trees is an offence under Section 210 of the Act. It is an offence to cut down, uproot or wilfully destroy a tree, or wilfully damage, top or lop a tree in such a manner as to likely destroy it. The offence is liable on summary conviction to a fine of up to £20,000.

10.25 Trees in Conservation Areas are similarly protected subject to the size of such a tree and under Section 211 and Section 212 of the Act, the same penalties apply.

Land or buildings that adversely affect the amenity of an area

10.26 Under Section 215 of the Town and Country Planning Act 1990, the local planning authority may take steps to require land or buildings to be cleaned up when its condition adversely affects the amenity of an area. The Council may serve a notice on the owner and occupier of the land requiring steps to be taken within a specified period.

10.27 The notice takes effect after 28 days from date of service. There is a right of appeal to the Magistrates Court and then to the Crown Court, during which time the notice is of no effect. If an appeal is unsuccessful, the notice takes effect and it is an offence not to carry out the steps required. If the notice is not complied with, the Council will consider prosecution proceedings or enter the land and carry out the required works. The costs incurred in carrying out the works will be recovered from the owner of the land.

Proceeds of Crime Act - POCA

10.28 The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

10.29 During the enforcement process the authority seeks full recovery of costs, where possible. Consideration will be given to the appropriateness and expediency of the use of POCA powers, including but not limited to the seeking of confiscation orders, in appropriate cases in which a defendant has benefited from criminal conduct or a criminal lifestyle. This will both help cover the costs of enforcement and ensure an effective disincentive to ongoing breaches of planning control.

Appendix 3

11.0 ENFORCEMENT POLICY FOR MALDON DISTRICT COUNCIL

11.1 Taking into account updated national policy guidance, local pressures and resources available the following policies will be applied across the district:

POLICY ENF1

The Council is committed to a planning enforcement function prioritised in the following order:

<u>Category 1.</u> Immediate – investigation expected within 1-2 working days

- Works to listed buildings
- Works to protected trees
- Demolition of important unlisted buildings in conservation areas
- Significant unauthorised building works
- Breach of conditions where there is likely to be irreversible harm, e.g. contaminated land, archaeology, flood defence and drainage
- Advertisements that may cause immediate harm such as 'A' boards affecting pedestrian safety, advertisements including fly posting which are intensive in scale or are affixed to trees and/or listed buildings

<u>Category 2.</u> Complaints classified as 'Urgent' - investigation within 15 working days
Councillors, formal Parish Council and MP

- Operational/ building works/ change of use/ compliance with conditions/ obligations affecting residential amenity where ongoing severe neighbour district being caused
- Operational development within conservation areas
- Where immunity rules are likely to shortly apply if action is not taken including mobile homes/ caravans

<u>Category 3.</u> Complaints classified as 'Non-Urgent' – investigation within 25 working days

- Other changes of use
- Other building works/condition of land
- Compliance with conditions unless significant harm is likely e.g. flood defence or contaminated land issues
- Advertisements and satellite dishes (not attached to trees or listed buildings) (conservation areas to be prioritised)

Appendix 3

POLICY ENF2

Complainants shall receive an email or letter of acknowledgement that the complaint is being investigated normally within 5 working days of receipt. They will receive updates based on the priority category of the investigation informing them what action the council intends to take or to close the case.

POLICY ENF3

Formal enforcement action to remedy a breach of planning control will only take place when it is considered expedient and in the public interest to do so.

POLICY ENF4

If there is severe harm to public amenity as a result of the failure to comply with planning conditions or unauthorised development, the Council will consider the use of stop notices, breach of condition notices, temporary stop notices and injunctions to speed up the effectiveness of the enforcement process.

POLICY ENF5

When investigating alleged breaches of planning control involving small business uses, the Council will take a positive approach towards the continuation of the activity and it being regularised by the grant of planning permission. If, however, there is a sustainable planning objection, the Council will endeavour to assist possible relocation to alternative premises. Provided there is not a severe impact on local amenity, the Council will seek to ensure that reasonable time is given to comply with enforcement action taken against business use activities.

POLICY ENF6

The Council will pursue, whenever possible, legal proceedings and/or the taking of direct action in the event of failure to comply with formal enforcement and related planning notices. The Council will consider the Proceeds of Crime Act for prosecutions.

POLICY ENF7

The Council will seek to address certain enforcement matters through other appropriate enforcement agencies such as the County Highway Authority (Essex County Council), Natural England and The Environment Agency where they have more immediate or effective enforcement powers.

Appendix 3
Appendix 1

APPENDIX 1 to Enforcement Policy

The following is a brief explanation of some of the more technical terms used throughout this policy document

Breach of Condition Notice (BCN)

The power to serve a BCN is contained in Section 187A of the Town and Country Planning Act 1990. A notice can be issued where a condition attached to a planning permission has not been complied with. There is no right of appeal against the serving of a BCN. Failure to comply with a BCN constitutes a criminal offence.

Breach of Planning Control

This is a term used when development has taken place that requires specific planning permission and no such permission has been granted. The term will also apply to failure to comply with a planning condition or limitation; carrying out works to a listed building; the display of illegal advertisements; unauthorised works to protected trees and trees within conservation areas and the condition of land or buildings which affect the amenity of an area.

Certificate of Lawfulness

Under Section 191 of the Town and Country Planning Act, application can be made to a local planning authority for a Certificate of Lawfulness in order to confirm whether an alleged breach of planning control is now lawful for planning purposes and therefore immune from enforcement action because of the time that has elapsed since the breach first took place. For a use to become immune from enforcement action and become lawful for planning purposes the following timescales apply:

- Erection of buildings and other works. 4 years
- Changes of use of a building to a single dwelling house. 4 years
- Changes of use of buildings or land other than a dwelling house. 10 years
- Non- compliance with a condition relating to the occupation of a building as a dwelling house 4 years
- Non-compliance with a condition other than occupation of a building as a dwelling house 10 years

(There may be exceptions and questions of interpretation that should first be discussed with the Planning Authority)

Appendix 3
Appendix 1

GLOSSARY OF TERMS

Default Powers (or Direct Action)

Under Section 178 of the Town and Country Planning Act, local planning authorities have the right to enter land or property and carry out works which the owner or occupier has failed to comply with any steps required to be taken in an effective enforcement notice. The costs are recovered from the landowner. The costs can be made as a charge on the land, to be recovered at the time of a future sale of the land or property, if the costs cannot be recovered at the time works are carried out in default.

Development Orders

The Town and Country Planning (General Permitted Development) Order 1995 grants 'deemed consent' for certain forms of development without the need to specifically apply for planning permission.

The Town and Country Planning (Use Classes) Order 1987 groups common uses together in a number of classes and confirms that changes occurring within the same Class would not normally require the submission of a planning application.

Enforcement Notice

The power granted to local planning authorities to issue and serve an enforcement notice is conferred under Section 172 of the Town and Country Planning Act 1990. The Notice must clearly state:

- The alleged breach of planning control
- The steps required to remedy the breach
- The reasons why an enforcement notice has been served
- The time available to comply with the steps

The notice has to be served on anyone having an interest in the land.

There is a right of appeal against the notice provided the appeal is lodged with the Planning Inspectorate before the date the notice takes effect. Once an appeal has been lodged, the enforcement notice no longer has any effect until such time as the appeal has been determined.

Appendix 3
Appendix 1

Fixed Penalty Notice

Under the Anti- social, Crime and Behaviour Act 2014 authorised enforcement officers of the District Council can issue a Fixed Penalty Notice for a number of offences. This includes fly-tipping, graffiti and fly posting.

Injunctions

When the Council consider it necessary or expedient for a breach of planning control to be restrained because it is causing serious harm to the amenity of an area, application can be made to the county court or high court for an injunction, whether or not they have exercised or are proposing to exercise any other powers of enforcement.

Such cases are rare but could be used for example when it is believed there is good evidence that works are likely to occur to protected tress or listed buildings which will result in irretrievable harm.

An injunction may be issued against a person whose identity is unknown, but who is able to be identified by other means.

Local Planning Authority

Maldon District Council is the local planning authority for most matters relating to the control of development within the administrative boundary except for the extraction of minerals and the deposit or waste, which is the responsibility of Essex County Council.

Planning Contravention Notice (PCN)

The power to issue a Planning Contravention Notice (PCN) is conferred by Section 171 of the Town and Country Planning Act 1990. A PCN can be served when the Council wishes to find out from the owner or occupier of the land when the suspected breach has occurred and additional information relating to the breach to enable a more detailed assessment to be made. A PCN is only served if a suspected breach has occurred and invites the owner or occupier of the land to make representations or submit a planning application.

Serving a PCN cannot rectify a breach if it has occurred. Failure to respond to a PCN within a specified time limit constitutes an offence and the recipient of the notice becomes liable to prosecution proceedings being taken.

Requisition for Information

A Requisition for Information will be served by the Council in order to establish the names and addresses or all persons who have an interest in land. A Notice is served when the Council intends to initiate formal enforcement action.

Appendix 3
Appendix 1

Standing Orders

The Council's Constitution grants certain delegated powers approved by the Council to allow the Director of Service Delivery and other officers to serve certain notices and initiate prosecution proceedings which are updated from time to time.

Stop Notices

The power to issue a Stop Notice is conferred under Section 183 of the Town and Country Planning Act 1990. A Stop Notice can be issued to support an enforcement notice and has the general effect of requiring a breach of planning control to cease almost immediately.

The issue of a Stop Notice is usually made when a breach is causing harm to the amenity of an area. Compensation is payable in some cases if the enforcement notice to which the Stop Notice relates is quashed on appeal on legal grounds.

Proceeds of Crime Act - POCA

The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. Confiscation occurs after a conviction has taken place. The aim of the asset recovery scheme in POCA is to deny criminals the use of their assets, recover the proceeds of crime and to deter criminality.

Confiscation orders under POCA are frequently used against fraudsters and drug-dealers to deprive criminals of the financial gain they have received from their criminal conduct. Less frequently used though is the power to obtain confiscation orders against people who commit crimes under legislation administered by local authorities.

For POCA to apply there must have been a successful prosecution for the offence, and the prosecutor must have asked for the confiscation order during the proceedings, or the court otherwise believed it was appropriate to make it. The order will not be made unless the defendant has benefited from the criminal conduct.

The confiscation order must be made in the Crown Court. Before making the order, the Court must consider, on the balance of probabilities, whether the defendant has a criminal lifestyle or has benefited from the particular criminal conduct. The term 'criminal lifestyle' comes directly from the legislation. The key tests for deciding if an individual has a criminal lifestyle or has benefited from particular criminal conduct are found in section 75(2) and will frequently mean "an offence committed over a period of at least six months and the defendant has benefited from the conduct which constitutes the offence" (section 75(2)(c)). The confiscation order is in addition to any other penalty (e.g. fine) which may have been imposed by the Court.

Appendix 3
Appendix 2

APPENDIX 2 to Enforcement Policy

ENFORCEMENT HARM ASSESSMENT FORM

SHOULD BE COMPLETED BY AN OFFICER WHO HAS SEEN THE DEVELOPMENT

- All complaints arising from all retrospective refusals of planning permission will automatically receive a full investigation, so it is not necessary to mark the harm score
- All Category 1 complaints under ENF1 will be investigated
- Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based
- Where there is no breach of planning control found the file will be closed accordingly.

POINTS ALLOCATION		**SCORE**
Is the breach	Ongoing Development (1)	
	Recently Commenced (1)	
	Stable (0)	
** Highway safety issue	Yes (2)	
	No (0)	
**Other safety issue (e.g. contaminated land)	Yes (2)	
	No (0)	
**Causing a Statutory Nuisance	Yes (2)	
	No (0)	
Complainant where full information has been provided as referred to in section 4	Immediate neighbour (2)	
	Members, MP, MDC Officer, Parish Council (1)	
	Other neighbour or member of public (1)	
	Anonymous, Malicious (0)	
Age of breach	Within 6 months of immunity (2)	
	Less than 1 Year (1)	
	More than 1 year old (0)	
Degree of Harm	Widespread (2)	
	Local (1)	
	None (0)	
Irreversible Harm	Yes (3)	
	No (0)	
Breach of condition or Article 4	Yes (1)	
	No (0)	
** Flood risk	Zone 3 (2)	
	Zone 2 (1)	
	Zone 1 (0)	
**Conservation Area (or adjacent to)	Yes (2)	
	No (0)	
**Listed Building (or affecting character or setting of)	Yes (3)	
	No (0)	

PART 5 – CODES AND PROTOCOLS

Appendix 3
Appendix 2

POINTS ALLOCATION		**SCORE**
Special operations or tasks (Please provide details)	Yes (1)	
	No (0)	
**Sensitive site (please provide details)	Yes (1)	
	No (0)	
Undesirable precedent (please provide details)	Yes (1)	
	No (0)	
TOTAL POINTS (HARM SCORE)		

Only Complaints which score 5 or above will be further investigated. Those with a lesser score will be informed of the breach/ likely breach and invited to remedy/regularise it. In both cases the complainant is to be notified of our actions.

Note: ** These areas are likely to need specialist input from other agencies/organisations and therefore the time periods referred to in this document may be affected if any responses from the agencies/organisations are delayed.

Appendix 4

MALDON DISTRICT COUNCIL

PUBLIC SPEAKING AT PLANNING COMMITTEE MEETINGS

Please see Public Speaking Protocol available on the Council's website.

Appendix 5

DEVELOPMENT MANAGEMENT - PROTOCOL FOR MEMBER INVOLVEMENT IN PRE-APPLICATION DISCUSSIONS

1. PROCEDURAL ELEMENTS FOR PRE-APPLICATION DISCUSSIONS

(**i**) **Development Management forums** – Upon receipt of a formal pre-application enquiry with appropriate fee the local authority considers the proposals to be a strategic major development (see section 5). The Council request the developer to attend a forum run by the authority with Councillors, representatives of consultees and various interested parties invited to hear and comment on an officer's introduction and developer's explanation of the emerging proposal. External invitees will be selected by officers from the Council's statutory planning application consultation list. The forum can provide a clear context for Members to listen to proposals and give views as to what issues need to be addressed in any formal submission.

Such forums should be arranged, chaired and publicised by the local authority. Consultees including, parishes, amenity societies and public representatives may be invited to speak. The Officer explains the process, the context of the proposals and the Councillors' roles. Officers note the issues arising and record any actions.

2. PROTOCOL FOR PRE APPLICATION DISCUSSIONS WITH COUNCILLORS

2.1 Step 1 Initiation of pre-app process

2.1.1 For Development Management Forums a prerequisite will be that a formal pre-application enquiry shall have been submitted, and an appropriate fee shall have been paid to the Council before any forum is arranged.

2.1.2 Within five full working days of a valid Development Management enquiry the details shall be entered onto a Pre-Application Register, held by the Planning Service.

2.2 Step 2 Assessment and arrangement

2.2.1 Officers will assess the pre- application proposals against the criteria for strategically important major development as described in Section 5 of this Protocol. Should the proposals be considered to be fitting with this criteria then the case officer will approach the developer with a view to arranging a pre-application with Members. Officers shall seek / pursue two dates (convenient to the Ward Member(s)) with the developer at which a meeting with Councillors can be held (Development Management performance criteria require a first written response to developers to be returned no later than 21 days from the receipt of an enquiry). Subject to these dates being convenient to the Ward Members(s), Councillors shall be notified via an all-Member email at no fewer than five days before any meeting date. The Development Control Management Forum shall be set for whichever the greatest number of Councillors is available to attend the forum*.

** where any dispute over the date of a meeting arises then arbitration shall be given within 48 hours by e mail agreement between the Director of Place, Planning and Growth and the Chairperson of the relevant Planning Committee*

2.3 Step 3 – At the Meeting

2.3.1 Where Members are present, the meeting will be conducted as follows:

a) A senior officer will introduce the purpose of the meeting and advise how it will be conducted. Members will be advised as to the confidentiality status of the proposal. The meeting will be chaired by a senior officer. If at any time the discussion departs from these considerations, then the chair will have discretion to close the forum.

b) Introductions will then be made.

c) The potential applicant will then present their proposal (the presentation having first been viewed by a Senior Planning Officer and if necessary, a legal officer, to ensure that it will not lead Members into negotiations and to check for accuracy).

d) Members will then have the opportunity to ask questions and seek clarification, but care will need to be taken that personal views are not expressed. They may alert the developer to what they perceive as the likely view of their constituents, but this must be in the context of the Local Development Plan (LDP) or alternative policy framework.

e) The Chairperson will then conclude the meeting. Members may advise Officers of any concerns they may have with the proposal and any elements which they feel would benefit from negotiation with the developer. Officers will provide professional advice and guidance as to what negotiations would be reasonable and align with the LDP or alternative policy. Negotiations will be undertaken by Officers only.

f) A Planning Officer will record the meeting and take a note of all present, plus any issues identified. Officers will take appropriate follow up action. The note of the meeting will be placed on file at the earliest opportunity (taking account of the need for commercial confidentiality). The involvement of Members will be recorded in any subsequent committee report.

2.4 Step 4 - Pre-application Feedback

2.4.1 Written pre-application guidance will then be prepared by Planning Services and sent to the applicant. The pre-application guidance letter will be circulated to those Members who have attended the event or otherwise given a written indication to be advised of the outcome.

2.5 Step 5 Additional meetings on request

2.5.1 Further meetings with potential developers and officers may be necessary to provide further information and clarification, after the provision of pre application guidance and prior to any application.

2.5.2 These further meetings will not as a rule involve Councillors. Only at the discretion of the Director of Place, Planning and Growth or the express request by ward Member/s or relevant Committee Chairperson shall subsequent meetings be the subject of further member engagement. In such circumstances, the case officer will approach the Director for a view as to the necessity to invite members, where upon an e mail notification requesting response within 48 hours shall be circulated to Ward Member/s or relevant Committee Chairperson to ascertain any interest in the second (etc.) meeting with the developer.

2.5.3 Only in these exceptional circumstances will Officers then circulate an all-Member email to advise of these further meetings (Step 2 then applies for notification and response, i.e. five days' notice, minimum of two meeting dates).

3 PRE-DETERMINATION AND PRE-DISPOSITION

3.1 A reason given for Councillors not getting involved in schemes before a formal consideration at planning committee is the appearance of injustice, i.e. being said to have pre-determined a scheme. As long as a councillor remains clear that they have not made up their mind and that they are willing to listen to all material consideration presented to a planning Committee before voting then they cannot be said to have pre-determined the outcome. In such circumstance a Member may be said to be pre-disposed by expression of a view but clearly will remain open to consideration of other material considerations before finally making their mind up and voting at the planning committee.

3.2 The following considerations also apply:

a) Members should only attend those meetings organised in accordance with this protocol and not arrange private meetings with developers.

b) Members should promote community aspirations through the Sustainable Community Strategy and the Local Development Plan or alternative policy process.

c) Members are at the meeting to learn about an emerging proposal, to help identify issues to be dealt with by further submission and negotiation and may wish to avoid expressing any firm view on the proposal which might indicate to third parties that the Member has 'pre-determined' the application. Although the Localism Act 2011 has provided greater freedom on this, the legal position remains that if pre-determination at the planning decision stage is evident, then this could give rise to legal challenge.

d) Any Planning Committee Member who elects to express a firm view for or against the proposed development at this stage should be mindful that further opinions, advice and evidence may arise during planning application process. So long as Members clearly state that the opinion is subject to receipt of further evidence and advice, and that they have not closed their mind on the matter, this may then be seen as pre-disposition which is legitimate. Officers will be pleased to advise Members further on this prior to any meeting.

e) Training will be available on request for Members who wish to attend pre application discussions.

4. GENERAL CONCLUSIONS

4.1 Pre-application discussions should always be conducted at the appropriate officer level. However, it should be made clear that the views expressed may be subject to review by officers at a more senior level or by Members at Committee. Advice should be consistent with statutory plans, government planning policy guidance and statements and any other material considerations.

4.2 Officers should make a detailed written note of any pre-application meetings as soon as practicable. Confirmation of the advice given should always be supplied in writing when requested by or on behalf of the applicant or when deemed appropriate by the section manager.

4.3 The involvement of Members should be recorded in any subsequent committee report.

4.4 In the case of potentially contentious meetings, two or more officers will attend.

5 STRATEGICALLY IMPORTANT MAJOR DEVELOPMENT CRITERIA

5.1 Residential

- Any application of 50 dwellings or more; or any outline residential development proposals whose site is 2 hectares or more
- Any residential proposal promoted as an allocated site within the LDP.

5.2 Affordable Housing

- Any 100% Affordable Housing proposals of six dwellings or 0.3ha or more in outline form.

5.3 Non-residential development

- Any non-residential development proposal, whose floor area is 1,500 square metres or more or whose site area is 2 hectares or more.
- Any non-residential proposals relating to development proposals allocated within the LDP.

5.4 Retail

- Any retail development 1,000 square meters or more or which of 250 square metres or more and is proposed to be beyond existing town centres as defined in the local plan or emerging LDP.

5.5 Mixed use development

- Any mixed use development proposals whose site area is 2 hectares or more or is of 50 dwellings or 1,000 square metres commercial floor area or more.

5.6 Renewable Energy

- Wind Turbines
- Any wind energy proposals whose output capacity is 1Mw or more or which proposes three or more turbines of 30m or more.
- Solar energy
- Any Solar energy proposals whose output capacity is 1Mw or more or which proposes 4,000 or more solar panels.
- Energy from Waste
- Energy from Waste Scheme which is 1Mw capacity or more.

NOTE: Development Management Enquiries - Consideration of other strategic or corporate merit:

Some applications which do not fit the thresholds or development types outlined above may demand discretion to be exercised as to their specific merits. These enquiries may have a local strategic importance or in some other way make a major contribution to the delivery of corporate objectives. In such circumstances the Director of Place, Planning and Growth in consultation with the appropriate Ward Member(s) will determine whether it is appropriate to engage Members in the pre-application process.

Updated and endorsed by the Council – 21 December 2017 (further updated November 2019)