

Borough Council of
**King's Lynn &
West Norfolk**



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18 September 2009

Dear Member

Standards Committee

You are hereby invited to attend a meeting of the above Committee to be held on **Monday 28 September 2009**, in the **Council Chamber, Town Hall, Saturday Market Place, King's Lynn** starting at **10.00 am** to discuss the business shown below.

Yours sincerely

Chief Executive

AGENDA

1 **APOLOGIES**

To receive any apologies for absence.

2 **PREVIOUS MINUTES**

To approve the Minutes of the meeting of the Full Committee on held on 22 June 2009 (attached), Local Assessment Sub Committees held on: 13 July, 12 August 2009 (attached pages 4-11).

3 **DECLARATIONS OF INTEREST**

Please indicate whether the interest is a personal one only or one which is also prejudicial. A declaration of an interest should indicate the nature of the interest and the agenda item to which it relates. In the case of a personal interest, the member may speak and vote on the matter. If a prejudicial interest is declared, the

member should withdraw from the room whilst the matter is discussed.

These declarations apply to all those members present, whether the member is part of the meeting, attending to speak as a local member on an item or simply observing the meeting from the public seating area.

4 EXCLUSION OF THE PUBLIC AND PRESS

To consider the following resolution:

“That under Section 100(a)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they may involve the likely disclosure of exempt information as defined in paragraphs 1 and 3 of Part 1, 2 and 3 of Schedule 12A to the Act.”

5 LOCAL ASSESSMENT OF COMPLAINTS

To receive a report from the Monitoring Officer (attached at pages 13 -15).

RETURN TO OPEN SESSION

6 REVISIONS TO MEMBER’S CODE OF GOOD PRACTICE FOR DEVELOPMENT CONTROL

To receive a report seeking the adoption of amendments to the Code of Good Practice for Development Control to ensure probity and fairness in decision-making (attached at pages 17 - 57).

7 NOTIFICATIONS TO PARISH COUNCILS CONCERNING COMPLAINTS

To receive a report from the Monitoring Officer (attached at pages 58 - 60).

8 NEW STANDARDS COMMITTEE REGULATIONS

To receive a report from the Monitoring Officer (attached at page 61 -118).

9 ANNUAL STANDARDS CONFERENCE OCTOBER 2009

To receive a verbal report from the Chairman (this item was deferred from the previous meeting).

10 ANY OTHER BUSINESS

11 **DATE OF NEXT MEETING OF THE FULL STANDARDS COMMITTEE**

To be confirmed.

To: Councillor I Goodson, D Harwood, J Legg, A Tyler and C Walters

Mr M Sale (Independent Member), Mr R Steward (Independent Member), Mr G Brierley (Independent Member), Mr J Dawson (Parish Representative), Mr H Malik (Parish Representative), Mr D Shepperson (Parish Representative)

Councillor Mrs K Mellish

N Leader, Legal Services Manager/Monitoring Officer
J Bullen, Senior Lawyer

Management Team

Parish/Town Councils

Press

Contact: Wendy Vincent, Democratic Services Officer, (01553) 616377 or
wendy.vincent@west-norfolk.gov.uk

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

STANDARDS COMMITTEE

**Minutes of a Meeting of the Standards Committee held on
Monday 22 June 2009 at 10.00 am in Meeting Rooms 1 and 2,
King's Court, Chapel Street, King's Lynn**

PRESENT:

J R Legg (Chairman)
Mr R Steward (Independent Member – Vice Chairman),
Mr J Dawson (Parish Representative),
Mr H Malik (Parish Representative), Mr D Shepperson (Parish Representative)
Councillors I Goodson and C Walters,
Nicola Leader (Legal Services Manager/Monitoring Officer)
Wendy Vincent (Democratic Services Officer)

1 ELECTION OF VICE-CHAIRMAN

RESOLVED: That Mr R Steward be appointed as Vice-Chairman for the meeting.

2 APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Harwood and Tyler, Mr M Sale and Mr G Brierley.

3 MINUTES

The Minutes of the Meeting of the Full Committee held on 24 March 2009, Local Assessment Sub-Committees held on 1 April 2009, 1 May 2009, 11 June 2009 and the Review Sub-Committee on 20 May 2009 were agreed and signed by the Chairman.

4 DECLARATIONS OF INTEREST

There were none.

5 LOCAL ASSESSMENT OF COMPLAINTS

The Monitoring Officer advised that since July 2008, 9 complaint forms had been received. It was reported that one complaint form was not forwarded to the Local Assessment Sub-Committee for determination because it clearly related to the behaviour of a Member in their private capacity, and therefore did not amount to a breach of the code.

Out of the remaining 8 complaint forms received, 5 were referred to the Monitoring Officer for investigation. One investigation had been completed. The Standards Committee considered the Monitoring Officer's report at their meeting on 9 December 2008 and agreed with the findings of the report that there was no breach of the code. Four investigations were ongoing.

The Local Assessment Sub-Committee had determined that 3 of the complaints received required no further action.

One request had been received for a review. The Review Sub-Committee agreed with the decision of the Local Assessment Sub-Committee in that there had been no breach of the code.

RESOLVED: That the update report be noted.

6 MEMBER/OFFICER PROTOCOL

The Monitoring Officer reminded the Committee that it had previously considered the Member/Officer Protocol report that had been to Cabinet on 31 March 2009.

The Standards Committee had expressed concern that consultation should be undertaken with staff. The Monitoring Officer explained that the draft protocol had been discussed with trade union representatives, who were happy with the content and welcomed the formalisation of the relationship between Members and officers.

A further report had been considered by Cabinet on 26 May 2009 recommending the following:

- (1) Cabinet is invited to adopt/recommend the attached draft protocol.
- (2) That the Chief Executive in consultation with the Leader be given delegated authority to make minor amendments to the protocol should they be required.

Councillor Walters commented that he was surprised that Cabinet had the authority to make the above recommendations.

Following a discussion, it was suggested that an amendment be moved at the Council meeting on 25 June 2009 as set out below.

RECOMMENDED: That the Standards Committee be given delegated authority to make minor amendments to the protocol should they be required.

7 ANNUAL STANDARDS CONFERENCE OCTOBER 2009

RESOLVED: That this item be deferred to the next meeting of the Standards Committee to be held on Monday 28 September 2009.

8 NOTIFICATIONS TO PARISH COUNCILS CONCERNING COMPLAINTS

RESOLVED: That this item be deferred to the next meeting of the Standards Committee to be held on Monday 28 September 2009.

9 ANY OTHER BUSINESS

The Chairman invited the Committee to raise any other issues.

Councillor Walters asked if there was anything coming up in the future for the Standards Committee to consider. In response, the Monitoring Officer advised that there was nothing specific. However, she reported that towards the end of 2008 there was an indication from the Standards Board of a further amendment to the Model Code to include Clerks, but to date no information had been received.

10 DATE OF NEXT MEETING

RESOLVED: That the next meeting of the Standards Committee be held on Monday 28 September 2009 at 10.00 am in the Committee Suite, King's Court, Chapel Street, King's Lynn.

The meeting closed at 10.15 am

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

STANDARDS COMMITTEE – LOCAL ASSESSMENT SUB-COMMITTEE

**Minutes of the Local Assessment Sub-Committee
held on Monday 13 July 2009,
at 1.53 pm in Meeting Room 2, King's Court, King's Lynn**

PRESENT:

Mr R Steward (Chairman – Independent Member)
Mr J Dawson (Parish Representative) and Councillor C Walters

OFFICERS PRESENT:

Nicola Leader - Monitoring Officer
Wendy Vincent - Democratic Services Officer

1. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

2. Declaration of Interests

There were none.

3. To consider the report of the Monitoring Officer (Allegation 06/09)

The Chairman welcomed everyone to the meeting.

The Sub-Committee considered the Monitoring Officer's report. The purpose of the Sub-Committee was to consider the Monitoring Officer's request to discontinue the investigation of a complaint previously referred for investigation by the Local Assessment Sub-Committee at a meeting on 1 May 2009.

DECISION

The Sub-Committee agreed to discontinue the investigation relating to Councillor X under Section 57A(3) of the Local Government Act 2000.

The Meeting closed at 2.01 pm

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

STANDARDS COMMITTEE – LOCAL ASSESSMENT SUB-COMMITTEE

**Minutes of the Local Assessment Sub-Committee
held on Wednesday 12 August 2009,
at 10.00 am in Meeting Room 1, Ground Floor, King's Court,
Chapel Street, King's Lynn**

PRESENT:

Mr M Sale (Chairman – Independent Member)
Mr J Dawson (Parish Representative) and Councillor J Legg

OFFICERS PRESENT:

Nicola Leader	-	Monitoring Officer
Jacqui Bullen	-	Senior Lawyer
Wendy Vincent	-	Democratic Services Officer

Observing for training purposes:

Mr G Brierley - Independent Member

1. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

2. Declaration of Interests

There were none.

3. To consider the report of the Monitoring Officer (Allegation 09/09)

The Chairman welcomed everyone to the meeting.

The Sub-Committee considered the Monitoring Officer's report. The purpose of the Sub-Committee was to consider the complaint against the assessment criteria agreed by the Standards Committee on 23 June 2008 and to reach one of the three following decisions:

- Refer the allegation to the Monitoring Officer which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority – for investigation or some other action such as mediation or training.
- Refer the allegation to the Standards Board for England.
- Decide that no action should be taken in respect of the allegation.

The Sub-Committee considered the complaint against the criteria agreed by the Standards Committee at their meeting on 23 June 2008.

DECISION

The decision of the Sub-Committee was read out:

The Sub-Committee referred the allegations (09/09) to the Monitoring Officer under Section 57A(3) of the Local Government Act 2000 for investigation.

The Meeting closed at 10.13 am

BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

STANDARDS COMMITTEE – LOCAL ASSESSMENT SUB-COMMITTEE

**Minutes of the Local Assessment Sub-Committee
held on Wednesday 12 August 2009,
at 10.14 am in Meeting Room 1, Ground Floor, King's Court,
Chapel Street, King's Lynn**

PRESENT:

Mr M Sale (Chairman – Independent Member)
Mr J Dawson (Parish Representative) and Councillor J Legg

OFFICERS PRESENT:

Nicola Leader	-	Monitoring Officer
Jacqui Bullen	-	Senior Lawyer
Wendy Vincent	-	Democratic Services Officer

Observing for training purposes:

Mr G Brierley - Independent Member

1. Exclusion of Press and Public

RESOLVED "That under Section 100(A)(4) of the Local Government Act, 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraphs 1, 2 and 3 of Part 1 of Schedule 12A to the Act."

2. Declaration of Interests

There were none.

3. To consider the report of the Monitoring Officer (Allegation 10/09)

The Chairman welcomed everyone to the meeting.

The Sub-Committee considered the Monitoring Officer's report. The purpose of the Sub-Committee was to consider the complaint against the assessment criteria agreed by the Standards Committee on 23 June 2008 and to reach one of the three following decisions:

- Refer the allegation to the Monitoring Officer which under section 57A(3) of the Local Government Act 2000, as amended, may be another authority – for investigation or some other action such as mediation or training.
- Refer the allegation to the Standards Board for England.
- Decide that no action should be taken in respect of the allegation.

The Sub-Committee considered the complaint against the criteria agreed by the Standards Committee at their meeting on 23 June 2008.

DECISION

The decision of the Sub-Committee was read out:

The Monitoring Officer would contact the complainants requesting further information. This is because the information provided was insufficient to make a decision as to whether the complaint should be referred for investigation or other action.

If the requested information is provided, the Chairman of the Assessment Sub-Committee has been granted delegated authority by the Committee to consider afresh whether the matter should be referred for investigation or other action. However, this should not be taken as an indication of the decision that any future Assessment Sub-Committee is likely to take.

Unless and until further information is received, no further action will be taken on this allegation.

The Meeting closed at 10.27 am

AGENDA ITEM NO.6

REPORT TO STANDARDS COMMITTEE

Date of meeting: 28th September 2009

REVISIONS TO MEMBER'S CODE OF GOOD PRACTICE FOR DEVELOPMENT CONTROL

Summary

A report to seek the adoption of amendments to the Code of Good Practice for Development Control to ensure probity and fairness in decision - making.

Recommendation

That Standards Committee recommend to Council the adoption of the amendments to the Code of Good Practice for Development Control as drafted.

Reason for Decision

To ensure best practice for Members in dealing with Development Control.

1 Background

1.1 In consultation with this committee a Member's Code of Good Practice for Development Control ("the Code") was adopted by Council on the 31st July 2008.

1.2 In May 2009 the Local Government Association ('the LGA') published a document entitled 'Probity in Planning - a revised guidance note on good planning practice'. The Council's Monitoring Officer considered and compared the revised guidance against the Code as currently drafted, with members of the DCB at a training session in June 2009.

1.3 The Code as drafted does already reflect the guidance produced by the LGA and therefore only two amendments are proposed. The first amendment reflects advice in the guidance in respect of the situation where a ward member who is also a member of DCB wishes to campaign for or against a proposal and to represent their ward interests. The guidance confirms the position that the Member having declared their pre-determined position can continue to represent those ward interests as a spokesperson for their local community; notwithstanding their DCB membership by addressing the Board pursuant to the Council's Standing Orders which gives Members the right subject to the giving of notice to attend and speak at any meeting. The second proposed amendment arose not in connection with the guidance but as a result of an issue that was raised at the DCB training session in June. Members agreed that when members exercised their right to refer matters to the Board, where the application they wished to refer was outside of their

ward that before they referred the matter they would approach the ward member and give them the opportunity to refer the matter to the Board first.

1.4 The proposed amendments are shown underlined on the amended Code attached to this report. They are:

- At Section 5 the insertion of the requirement that a Member who is excluded from participating as a Board Member because they have pre-determined an application and attends DCB pursuant to SO.34 will be required to withdraw from the room where the DCB meeting is taking place once they have finished speaking.
- At Section 12 the insertion of a caveat to the right of Members to refer applications to the Board for determination. The caveat being that members shall not normally refer proposals outside of their ward to the Board until such time that they have discussed their intention with the ward member and given them the opportunity to refer the matter themselves.

2 Financial Implications

None

3 Statutory Consideration

None

4 Risk Assessment

4.1 Without the adoption of such a Code and members not complying with the Code the Council may be vulnerable to accusations of maladministration and challenge by way of judicial review.

5 Access to Information

- Local Government Association Publication entitled 'Probity in Planning - a revised guidance note on good planning practice'.
- Draft revised Member's Code of Good Practice for Development Control



BOROUGH COUNCIL OF KING'S LYNN AND WEST NORFOLK

MEMBERS' CODE OF GOOD PRACTICE FOR DEVELOPMENT CONTROL

1 Introduction

The aim of this Code is to promote openness and transparency in the operation of the planning process and to ensure that there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

The key purpose of the planning system is to control the development and use of land in the public interest. Your role as a member of the Development Control Board ('the DCB') is to make decisions openly, impartially, with sound judgement and for justifiable reasons.

Guiding principles are set out within this Code to assist members in achieving those objectives.

This Code applies to Members at all times when involving themselves in the planning process. It applies equally to planning enforcement, planning applications, planning policy and includes formal and less formal occasions, such as meetings with Officers or the public and consultative meetings. In addition to meetings of the DCB, it will include meetings of the Council, Cabinet and any other formal or informal meeting of Members.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early from the Monitoring Officer or one of her staff, preferably well before any meeting takes place.

2 Relationship to the Members' Code of Conduct

This Code is intended to supplement the Members' Code of Conduct adopted by the Council. It is unlikely that there will be any conflict between the two codes but, if there is, the provisions of the Member's Code of Conduct will always take precedence, so;

- **Do** apply the rules in the Members Code of Conduct first. These must always be complied with.
- **Do** then apply the rules in this Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of dealing with all planning matters. If you do not abide by this Code of Good Practice, you may put:

- the Council at risk of legal proceedings or a complaint to the Local Government Ombudsman; and
- yourself at risk of either being the subject of a complaint to the Ombudsman or the Standards Committee or both.

3 **Personal and Prejudicial Interests under the Member's Code of Conduct**

Where your interest is personal:-

- **Do** disclose that you have a *personal interest* and the nature of the interest at the beginning of any meeting unless your interest arises solely from your membership of, or position of control or management on, a body to which you were nominated by the Council or another public body in which case, provided you do not have a *prejudicial interest* you only need to declare your interest if and when you speak on the matter.

Once you have declared that interest you **may** remain in the meeting and speak and vote.

Where your interest is personal and prejudicial:-

- **Do** disclose that you have a *prejudicial interest* and the nature of that interest at the beginning of the meeting and, unless you wish to exercise your right to speak under Para 12(2) of the Members' Code withdraw immediately from the room where the meeting is being held for the duration of any discussion and/or voting in the matter.

Nb. Para 12(2) of the Members' Code provides that members with a prejudicial interest are afforded the same rights to address the DCB as members of the public. However, you must immediately leave the room once you have finished or when the meeting decides that you have finished (if that is earlier). You cannot remain in the public gallery to observe the vote on the matter.

The rules on public participation at DCB provide that members of the public may speak for 3 minutes on an application. Members wishing to exercise this right will similarly be permitted to speak for 3 minutes.

4 **Applications by Members**

Always notify the planning department when an application has been submitted by you or your spouse or partner. In those circumstances the application will always be submitted to the DCB for determination and not dealt with by officers under delegated powers. It is advisable that

you employ an agent to act on your behalf on the proposal in dealing with officers.

5 **Making decisions with a 'closed mind' and the issue of bias**

It is important that members approach planning applications with an open mind and are able to weigh all the arguments right up to the point at which a decision is made. If you make it clear that you have made up your mind to vote for or against an application before the meeting, regardless of the officer's presentation and evidence and arguments on both sides, this could well leave the eventual decision open to legal challenge and/or a finding of maladministration.

- **Don't** inhibit your ability to participate in planning decision-making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an external interest or lobby group), on how you will vote on any planning matter prior to formal consideration of the matter at the DCB meeting. when you will have the opportunity of hearing the officer's presentation and evidence and arguments on both sides.

Pre-determining a matter in this way and then taking part in the decision will put the Council at risk of a finding of maladministration and of legal proceedings.

A pre-determined Member can continue to represent his/her ward interests by attending the Board pursuant to Standing Order 34. However, he/she should withdraw from the room once the opportunities to speak under SO 34 have been completed. This is to counter any suggestion that members of the Board may have been influenced by their continuing presence.

6 **Members who are also members of a Parish or Town Council or other consultee bodies**

A member of the DCB may also serve as a Parish or Town member or on another consultee body which makes representations about a planning application to be considered by the DCB.

If as a member of the DCB you are present at a meeting of the Town or Parish Council or the consultative body (or one of its committees) when the application is under consideration, you can take part in the discussion or express any view on the application but should ask for your membership of the DCB to be noted and make it clear that before making any decision at the DCB you will consider all relevant matters to be recorded.

Members should not however vote on the matter because that would suggest that members had reached a final decision on the application and in those circumstances they will be excluded from participating in the consideration of the matter at DCB.

Subject to the above you will be able to take part in the debate and vote at DCB unless the proposal substantially affects the well-being or financial standing of the Parish or Town Council or consultee body;

At DCB, any member who has expressed a view on the merits of an application at a meeting of a Town or Parish Council should make this known and should repeat that they will consider all relevant matters before coming to a decision.

7 Contact with Applicants, Developers and Objectors

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Do** follow these seven rules whenever you have any pre-application discussions with applicants, objectors or other interested parties.
 - Make clear from the start that the discussion will not bind the Borough Council to making a particular decision and that any views are personal and provisional;
 - encourage applicants or objectors to contact the planning officers for further guidance;
 - base anything you say on the Development Plan and material considerations;
 - act impartially, not appearing to favour one side or the other.
 - follow the rules on lobbying in this Code;
 - make notes of the discussion and
 - report to the Head of Development Services or Planning Control Manager and subsequently at the meeting when it is considered at Development Control Board, any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

8 In addition and in respect of presentations by applicants/developers:

- **Do** try and avoid attending a planning presentation unless an officer is present and/or it has been organised by officers.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application; this will be carried out by the DCB in public.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other members might vote.

9 **Lobbying of Councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it will prejudice your impartiality and therefore your ability to participate in the decision making process if you express an intention to vote one way or another or such a firm point of view that it amounts to the same thing.
- **Do** remember that your overriding duty is to the whole community not just to the people in your ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum; its acceptance is declared as soon as possible and remember to register the gift or hospitality with the Monitoring Officer where its value is over £25 in accordance with the Members' Code of Conduct.
- **Do** copy or pass on any lobbying correspondence you receive to the Head of Development Services or Planning Control Manager at the earliest opportunity in order that it can be placed on the appropriate planning file and is open for inspection before a decision is made.
- **Do** promptly refer to the Head of Development Services or Planning Control Manager any offers made to you of planning gain or constraint of development, through a proposed S.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including

inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.

- **Do** note that unless you have a personal and prejudicial interest, you will not have pre-determined your discretion or breached this Code simply by:
 - listening or receiving viewpoints from residents or other interested parties as long as you make yourself equally available to those of differing viewpoints if requested to do so;
 - making comments to residents, interested parties, other members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion or speaking at the meeting as a ward member, provided you explain your actions at the start of the meeting or item and make it clear that, having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

10 **Lobbying by Councillors**

- It is acceptable for members to lobby fellow members but don't do so in such a way that places undue pressure on them to determine an issue in a particular way or to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any planning application or policy matter at any sort of political group meeting, or lobby any other member to do so.

11 **Your relationship with Officers**

- **Don't** put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Head of Development Services or Planning Control Manager which may be incorporated into any Development Control Board or Council report. Your attention is drawn to the danger of fettering your discretion on a matter which is covered in Section 3 of this Code).
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the

Head of Development Services or Planning Control Manager or those officers who are authorised by them to deal with the proposal at a member level.

- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Development Control Board/Council or their members.

12 Referring applications to the Board

- Only request that an application which would normally be determined by Officers under the Scheme of Delegation is referred to the DCB for determination where you have a material planning reason for that request. Do not refer matters simply with the objective of obtaining a particular outcome.

Where a member requests that an application is referred to the DCB for determination that member will be asked to confirm his/her attendance by email to the relevant Planning Officer prior to publication of the agenda at the meeting to which it is referred. If the member is unable to confirm their attendance or fails to attend, except in exceptional circumstances (which will be at the Chairman's discretion, the application may not be considered and could be referred back to the Officers to determine.

Members shall not normally refer proposals outside of their ward to the Board. However, where the member considers that there are planning reasons/reasons or wider concern which require the proposal to be considered by the Board he/she will before referring the proposal to the Board approach the ward member and give them the opportunity to refer the matter to the Board.

13 Decision making generally

- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 54A of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that

there is simply insufficient information before you, request that further information and, if necessary, defer consideration of the proposal until the information has been provided and you have had an opportunity to consider it.

- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

14 **Communication with members of the public during meetings**

- **Don't** communicate with members of the public, applicants or objectors who may be attending the DCB meeting as this may give the appearance of bias.

15 **Attendance**

At re-convened meetings **don't** participate in the debate or vote on a planning application unless you have been present at the previous meeting and subsequent site visit to hear the entire debate.

16 **Site Visits**

The purpose of a site visit is to see the relevant aspects of the site and assist in judging the impact of the proposed development. The site visit is not an opportunity to engage in dialogue or negotiate on a proposal. The purpose of the visit is limited to Members of the Development Control Board gleaning appropriate information for their decision-making needs.

- **Do** try to attend site visits organised by the Council where possible.
- **Don't** request a site visit unless you feel it is strictly necessary because site visits can cause delay and additional cost. They should only be arranged where the expected benefit is substantial. This may be where:
 - particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a formal site inspection; or

- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

The Development Control Board is in recess during a site visit and therefore the rights of attendance and representation by the public and other representatives (including the provisions of SO.34) do not apply. However those Ward members who attended and made representations at the meeting of the DCB at which the application was adjourned for a site visit may attend for the purpose of clarifying matters within their local knowledge.

Persons other than Council Officers and Members of the Development Control Board may only observe the visit if expressly permitted to enter onto the site by the landowner and even then, they may not make representations or lobby members during the visit.

- Documents, letters or petitions concerning the proposal shall not be accepted from any party on any site visit.
- No decision will be made on site. Only the reconvened Development Control Board, normally sitting later that day, shall be able to make a decision.

16 **Administrative Procedures**

- Site visits will normally be arranged for the third day following the original meeting.
- The arrangements for the site visits will be made by Democratic Services and will be notified to Members the day following the original meeting.
- The Democratic Services Officer shall make a record of attendance which shall be kept on the planning application file.

17 **Procedures on Site**

- The Chairman of the Development Control Board shall control the visit and her/his decision shall be final.
- The Chairman shall open the visit by calling all Members together and explaining the procedure during the site inspection and shall remind Members that the purpose of the visit is solely an opportunity to see the relevant physical aspects of the site, and that they should refrain from discussing the merits of the proposal with anyone and should direct any questions of clarification to the Planning Officer.
- The Chairman will remind members that they should not hear representations from any other party and that if Members are

approached by anyone in that way that they should direct them to the Planning Officer present.

- The accompanying Planning Officer will then explain the proposal, the characteristics of the site and area relevant to the proposal and the material planning considerations.
- The Chairman will then invite Members to ask questions or clarify points of fact to the Planning Officer.
- Whilst on the site the Board should operate as a single entity ensuring all Members receive the same information. The Chairman shall ensure the Members remain together during the procedure set out above.
- The Chairman shall close the meeting by so indicating and asking Members to leave the site.

18 **Please Note:**

For legal, health and safety reasons it is important that Members are escorted onto and from the site by an Officer and remain together as a single group whilst on site. This is because:

- Members have no right of access to land
- They could expose themselves to heavy lobbying or accusations of bias if unaccompanied and
- Separate visits are likely to result in confusion about the material facts.

Only Members of the Development Control Board should attend on site.

20 **Training**

- Members and substitutes may only sit on DCB where they have attended the DCB induction training offered by the Council.
 - Members and substitutes are expected to attend any other specialised training sessions provided since these will be designed to extend your knowledge of planning law, regulations, procedures, codes of practice and Development Plans which will assist members in carrying out their role properly and effectively.
 - On-going training is a requirement of the membership of the Board and will be monitored by Democratic Services.
 - Members should give apologies if they are not able to attend a training session.

21 **Breach of this Code**

A complaint that a Member has breached this Code should be made in writing to the Monitoring Officer and may be referred to the Standards Committee for investigation and determination.



Local Government Association

probity in planning:
the role of councillors
and officers – revised
guidance note on
good planning practice
for councillors and
officers dealing with
planning matters

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- 1.1 Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.

The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected councillors and planning officers understand their roles and the context and constraints in which they operate.

- 1.2 Planning decisions involve balancing:
- the needs and interests of individual constituents and the community, with
 - the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.

The challenge of achieving the balance between these dual roles led the LGA to issue its original *Probity in*

planning guidance note in 1997. However, since then a comprehensive ethical framework for local government was introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. Each authority is required to adopt a local code of conduct that sets out rules governing the behaviour of its members.

This 2009 update provides refreshed advice on achieving this balance in the light of such changes. It also better reflects local authorities' roles as place shapers and the enhanced role for councillors as champions of their local communities. It recognises councillors' ability to participate in discussions prior to the receipt of a planning application on behalf of their communities, and engaging in spatial planning policy formulation.

It provides advice on this following the Killian Pretty review's recommendations. It also advises on how to avoid predetermination or bias in decision making. Whilst the advice is designed primarily for officers and councillors involved in plan-making and development management, it will also assist scrutiny and standards committees dealing with planning matters.

introduction

- 2.1 A lot has changed in expectations of the planning system since the previous LGA guidance was published.
- 2.2 Following the planning green and white papers, and subsequent legislation, planning is moving to the heart of local authorities place-shaping and community planning roles. Positive attitudes to harnessing the benefits of sustainable development are changing stereotyped images of planning as a control mechanism. More flexible and responsive development plans are being prepared to harness development to build communities and shape places.
- 2.3 Councillors are encouraged to act as champions of their local communities and to co-ordinate public service delivery through Local and Multi Area Agreements, Strategic Partnerships, and Sustainable Community Strategies. Creative place-shaping requires early and wide engagement and councillor and officer involvement. The 2008 LGA publication *Planning at the heart of local government* explains these changes in more detail.
- 2.4 This guidance is intended to facilitate the development of councillors' community engagement roles. The Nolan report resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. However in the place-shaping context, early councillor engagement is now positively encouraged to ensure sustainable development proposals can be harnessed to produce the settlements that communities need.
- 2.5 This guidance is intended to amplify the following for councillors grasping these new opportunities:
- Standards Board for England 2007 *members guide on the code of conduct and occasional paper on predisposition, predetermination and bias*;
 - Association of Council Secretaries and Solicitors *Model member's planning code of good practice 2007*; and the
 - Planning Advisory Service *Effective engagement* advice.
- 2.6 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.

- 2.7 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 planning authorities should 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.
- 2.8 Bearing in mind all these factors, it is not surprising that, from time to time, things can go wrong unless councils are on their guard. This is why this guidance is essential.
- 2.9 The intention of the guidance is not to suggest that there is one best way of doing things. Local circumstances may well provide good reasons for local variations of policy and practice. However, each council should review the way in which it conducts its planning business, holding in mind the recommendations of this guidance.
- 2.10 This guidance refers to the actions of a planning committee of an authority, as the main decision-making forum on planning matters. However, it is recognised that authorities have developed a range of alternative forms of decision-making: area committees; planning boards, and of course, the full council itself - as the final arbiter in planning matters. It is important to stress, therefore, that the advice in this guidance note applies equally to these alternative forms of decision-making arrangements. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local development documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in any planning enforcement.
- 2.11 This revised guidance note is useful to both councillors and officers who become involved in operating the planning system - it is not therefore restricted to professional town planners and planning committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. 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.

the general role and conduct of councillors and officers

3.1 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. It follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each others positions. This relationship and the trust which underpins it must never be abused or compromised.

3.2 Both councillors and officers are guided by codes of conduct. The code of conduct for members (the code), supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Staff who are Chartered Town Planners are guided by the RTPI's Code of Professional Conduct, breaches of which may be subject to disciplinary action by the Institute. However, not all planning officers are members of the RTPI and it is therefore recommended that the Code of Professional Conduct (or those parts of it which are relevant) is incorporated into conditions of

employment. In addition to these codes, a council's standing orders set down rules which govern the conduct of council business.

3.3 The code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests, as well as appropriate relationships with other members, staff and the public. This impacts on the way in which councillors participate in the planning process. Of particular relevance to councillors making decisions on planning applications and planning policies is paragraph 6(a) which states that a member:

"must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage."

3.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst councillors should take account of these views,

they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.

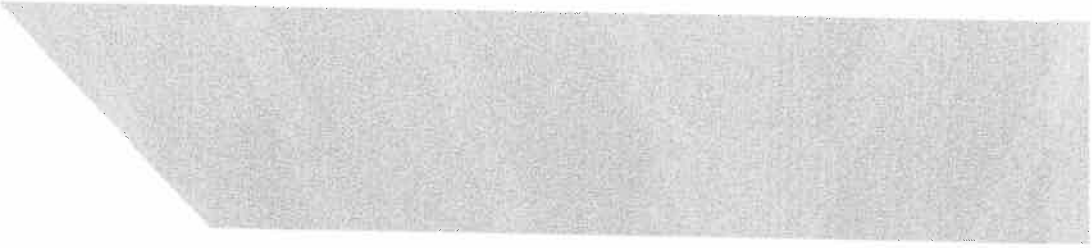
- 3.5 Councillors should also be very cautious about accepting gifts and hospitality. The code requires any members receiving, in their capacity as members, any gift or hospitality over the value of £25, to provide written notification of the details to the monitoring officer of the council within 28 days of its receipt. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.
- 3.6 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. Councils should provide a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the council's monitoring officer. Failure by an officer to make an entry is likely to lead to disciplinary measures.
- 3.7 Employees must always act impartially. In order to ensure that senior officers do so, the Local Government and

Housing Act 1989 enables restrictions to be set on their outside activities, such as membership of political parties and serving on another council. Councils should carefully consider which of their officers are subject to such restrictions and review this regularly.

- 3.8 Staff must act impartially as a requirement of the draft statutory employees' code. Such impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on members in the code. Members are placed under a requirement by paragraphs 2(b) and (c) of the code to: treat others with respect; and not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
- 3.9 Finally, planning legislation and guidance can be complex. The LGA endorses the good practice of many councils which ensures that their members receive training on the planning process when first serving on the planning committee. It also recommends that members be updated regularly on changes to legislation or procedures. Such training is essential for those members involved in making decisions on planning applications and on local development documents. Authorities should provide training on the planning processes for all members.

registration and declaration of interests: predetermination, predisposition or bias

- 4.1 The Local Government Act 2000 and the national code place requirements on members on the registration and declaration of their interests, as well as the consequences for the member's participation in consideration of an issue, in the light of those interests. For full guidance on personal and prejudicial interests reference should be made to the Standard's Board *Code of Conduct guidance* 2007. In addition, advice may be sought from the council's monitoring officer. The requirements must be followed scrupulously and councillors should review their situation regularly. However, ultimate responsibility for fulfilling the requirements rests individually with each councillor.
- 4.2 The provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor's wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts.
- 4.3 A register of members' interests will be maintained by the council's monitoring officer, which will be available for public inspection. A member must provide the monitoring officer with written details of relevant interests within 28 days of their election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.
- 4.4 An interest can either be personal or personal and prejudicial. The 2007 national code defines personal and prejudicial interests in any matter under discussion, and should be referred to for the appropriate detail. A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias. Predetermination goes beyond predisposition and essentially evades the process of weighing and balancing relevant factors and taking into account other viewpoints. Sections 6.4 and 6.5 of this guidance further illustrate the concepts of bias and predetermination.

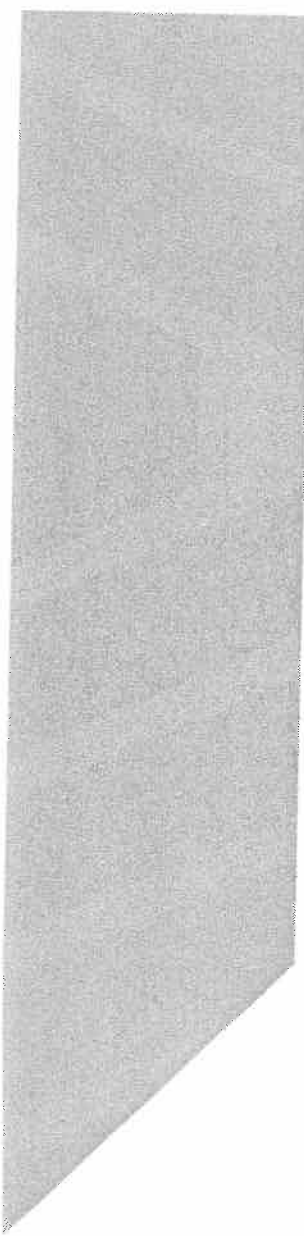
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- 4.5 A prejudicial interest would require withdrawal of the councillor from the committee. However, an exception has been included in the 2007 code. Where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose. Paragraph 5.3 of this guidance advises on this when a councillor is submitting a planning application to their authority.
- 4.6 If a councillor with a prejudicial interest speaks at a committee, they should withdraw after they have spoken. This is to ensure that members of the committee do not, by their presence, influence or seek to influence the remainder of the decision-making body.
- 4.7 The exceptions made to the definition of personal interests in the code, relating to membership of outside bodies, are attempts to clarify the nature of such interests and to encourage participation in such cases. It appears that too often in the past, members had been prevented from participation in discussions in such circumstances, on the basis that mere membership of another body constituted an interest that required such a prohibition, even in cases where the member was only on that body as a representative of the authority.
- In addition, this clause was intended to allow councillors to exercise their representative function and make representations on behalf of their constituents, in cases where they have a personal and prejudicial interest.
- 4.8 A personal interest will not require withdrawal. Where a member considers they have a personal interest in a matter, they must always declare it, but it does not follow that the personal interest debars the member from participation in the discussion.
- 4.9 In addition to any declaring personal or prejudicial interests, members of a planning committee need to avoid any appearance of bias or of having predetermined their views before taking a decision on a planning application. The Standards Board has provided guidance on predetermination, predisposition and bias. Avoidance of bias or predetermination is a principle of natural justice which the decision-maker is expected to embrace by the courts. But councillors will often form an initial impression or view.

A distinction is drawn by the courts between a planning councillor having clearly expressed an intention to vote in a particular way before a meeting (pre-determination), and a predisposition to an initial view, but where the councillor is clear they are willing to listen to all the material considerations presented at the committee before deciding on how to exercise their vote on behalf of the community. In the latter case there is no predetermination. This distinction is helpfully explained by the Standards Board for England in an occasional paper.

- 4.10 If a planning committee councillor has been lobbied by friends or others and wishes to pre-determine their position to promote or oppose a planning application, they will need to consider whether this has become a personal interest or not. Whether or not it is a personal interest, they need to consider if their view is likely to be regarded as pre-determined and against the fair determination of the planning application. If they have pre-determined their position, they should avoid being part of the decision-making body for that application.

- 4.11 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. The councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their normal planning committee membership. However they would have to declare their position and not take part in the vote to avoid accusations of bias.

- 4.12 Cabinets and executives have created an interesting situation for cabinet members, portfolio holders and leaders who are also members of the planning application or local development document planning decision body. Authorities will typically have a member responsible for development. If that member is on the authority's planning committee or other decision-making body for planning matters, there may be occasions when that member will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that executive member be able to vote on any planning application relating to that development?



4.13 The appropriate action is not clear cut, and will depend on the circumstances of a particular case. However, the general advice is that a member in such circumstances may well be so committed to a particular development as the result of their cabinet/executive responsibility that they may not be able to demonstrate that they are able to take account of all material considerations before a final decision on a planning application is reached. The member may be seen as the chief advocate on behalf of the authority for the development in question. In that sense, the member almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

4.14 Given the significance of well-informed and appropriate judgments by members on the declaration of interests, predetermination predisposition and bias, it is strongly recommended that councils should hold annual seminars on the issue, and on the planning process generally. Many do this.

The Standards Board nationally, and the authority's standards committee locally, have the statutory responsibility of promoting and maintaining high standards of conduct by members and assisting them to observe the authority's statutory code of conduct. In providing such guidance and training to members at local level, the standards committee of the authority should be encouraged to include provision for the implications of the code and this guidance in planning matters to be considered.

development proposals submitted by councillors and officers; and council development

- 5.1 Proposals to their own authority by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. So can proposals for a council's own development. Proposals can take the form of either planning applications or development plan proposals.
- 5.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:
- serving councillors who act as agents for people pursuing planning matters within their authority should not play a part in the decision-making process for those proposals. Similarly, if they submit their own proposal to their authority they should play no part in its decision making;
 - a system should be devised to identify such proposals;
 - the council's monitoring officer should be informed of such proposals;
 - proposals should be reported to the planning committee as main items and not dealt with by officers under delegated powers.

- 5.3 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the code and as such, the councillor would be required to withdraw from any consideration of the matter. The code also provides that the councillor should 'not seek improperly to influence a decision about the matter'. It is important to emphasise here that 'improperly' does not imply that a councillor should have any fewer rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee.

However, whilst a member with a prejudicial interest may now address the committee under the code if the public enjoy the same rights, the member should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the councillor with the remainder of the planning committee.

- 5.4 Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers. A member whose cabinet/executive responsibility effectively makes them an advocate for the development in question almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

lobbying of and by councillors

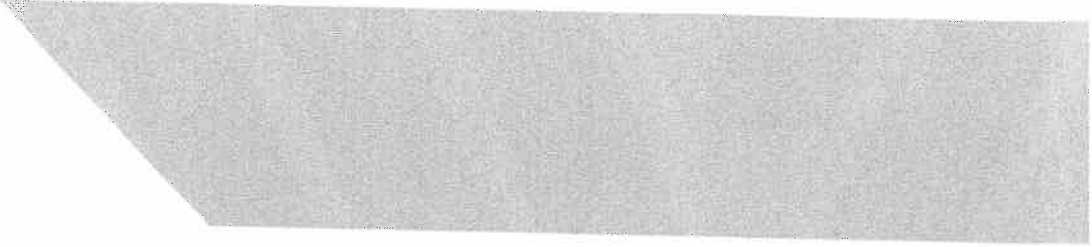
- 6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's third report stated: "It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is through the local elected representatives, the councillors themselves". Any guidance failing to take account of the realities of the political/representative process will not carry credibility with experienced elected members.
- 6.2 However, lobbying can lead to the impartiality and integrity of a councillor being called into question, unless care and common sense is exercised by all the parties involved. When being lobbied, councillors (members of the planning committee in particular) should take care about expressing an opinion that 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 situations, 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 heard all the relevant evidence and arguments at committee.
- 6.3 Concerns on poor practices within local authorities have often been based on the issue of lobbying.
- 6.4 Councillors, and members of the planning committee in particular, need to avoid bias and predetermination and take account of the general public's (and the Ombudsman's) expectation that a planning application will be processed and determined in an open and fair manner. To do this, members taking the decision will take account of all the evidence presented before arriving at a decision, and will avoid committing themselves one way or another before hearing all the arguments. To do otherwise makes them vulnerable to an accusation of partiality. Bias or the appearance of bias has to be avoided by the decision-maker. Whilst the determination of a planning application is not strictly a 'quasi-judicial' process (unlike, say, certain licensing functions carried out by the local authority), it is,

nevertheless, a formal administrative process involving application of national and local policies, reference to legislation and case law as well as rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly. There is an added possibility that an aggrieved party may seek judicial review on the way in which a decision has been arrived at; or complain to the Local Government Ombudsman on grounds of mal-administration; or that a member has breached the code.

- 6.5 In reality of course, members will often form an initial view (a predisposition) about an application early on in its passage through the system, whether or not they have been lobbied. The difficulty created by the nature of the planning committee's proceedings as set out in the paragraph above, is that members of the committee (at least those who are not councillors of the affected ward - see overleaf) should not decide or declare which way they may be inclined to vote in advance of the planning meeting, or before hearing evidence and arguments on both sides.
- 6.6 Political reality suggests that it is often important to distinguish between the role of the planning committee member who is, and who is not, a ward member for the area affected by a particular planning application.

A planning committee member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the committee meeting before declaring one way or another.

- 6.7 A planning committee member who represents a ward affected by an application may be in a difficult position if it is a controversial matter on which a lot of lobbying takes place. If the member responds to lobbying by deciding to go public in support of a particular outcome - or even campaigning actively for it - they will have predetermined their position when the committee comes to take a decision on the application. The risk of perceived bias means that the proper course of action for such a member would be not to vote.
- 6.8 As explained previously, even where a councillor has a prejudicial interest in any business of the authority, they may attend a meeting but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose.

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- 6.9 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. A pre-determined councillor can continue to represent those ward interests as a spokesperson for their local community, notwithstanding their planning committee membership. If that councillor speaks on behalf of a lobby group at the decision-making committee, they would be well advised to withdraw once any public or ward member speaking opportunities had been completed. This is to counter any suggestion that members of the committee may have been influenced by their continuing presence.
- 6.10 Councils should consider the provision of arrangements for the planning committee to hear representations from a ward member in circumstances where that member takes the view that it would be inappropriate to vote, if these are not already dealt with in the council's procedures. (See also section 9 on public speaking at planning committees).
- 6.11 It should be evident from the previous paragraphs that it is very difficult to find a form of words which conveys every nuance of these situations and which gets the balance right between the duty to be an active local representative and the requirement when taking decisions on planning matters to take account of all arguments in an open-minded way. It cannot be stressed too strongly, however, that the striking of this balance is, ultimately, the responsibility of the individual member.

6.12 Any local code or guidance of planning good practice should also address the following more specific issues about lobbying:

- given that the point at which a decision on a planning application is made cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, no political group meeting should be used to decide how councillors should vote. The use of political whips to seek to influence the outcome of a planning application is likely to be regarded as maladministration;
- with the exception in some circumstances of ward councillors, whose position has already been covered in the preceding paragraphs, planning committee councillors should in general avoid organising support for or against a planning application, and avoid lobbying other councillors. Such actions can easily be misunderstood by parties to the application and to the general public;
- councillors should not put improper pressure on officers for a particular recommendation, and, as required by the code, should not do anything which compromises, or is likely to compromise, the officers' impartiality. Officers acting under the council's delegation scheme

to determine an application or making recommendations for decision by committee, are required to be impartial. It is therefore important, as reflected in the code, for councillors to refrain from seeking to influence the outcome of the officer's decision or recommendation;

- call-in procedures, whereby members can require a proposal that would normally be determined under the delegated authority to be called in for determination by the planning committees, should include provisions requiring the reasons for call in to be expressed in writing so that there is a record of decision, and should refer solely to matters of material planning concern.

pre-application discussions

- 7.1 Discussions between a potential applicant and a council prior to the submission of an application can be of considerable benefit to both parties and are encouraged. However, it would be easy for such discussions to become, or to be seen by objectors to become part of a lobbying process on the part of the applicant.
- 7.2 With the recognition of the need to allow and encourage councillors to be champions of their local communities in the local government white paper, there has followed a realisation that councillor engagement in pre-application discussions on major development is necessary to allow councillors to fulfil this role. Many councils had been so concerned about probity issues following Nolan and the introduction of the ethical code, that they had not involved councillors in pre-application discussions for fear of councillors being accused of predetermination when the subsequent application came before them for determination.
- 7.3 In 2006, the Audit Commission followed emerging advice from the Local Government Association, National Planning Forum, and Planning Advisory Service that councillor involvement in pre-application discussions was beneficial provided it was done within carefully established limits to protect the council and its councillors.
- The Audit Commission recommended that councils should develop effective approaches to pre-application discussions which involve councillors, to ensure the issues relating to proposed planning applications are identified and addressed early in the process. This was partly to help councillors lead on community issues and partly to ensure that issues were not identified for the first time when the application was presented to the committee for decision, causing delay and frustration.
- 7.4 The updated 2008 leaflet *Positive engagement – a guide for planning councillors* endorsed by the government and LGA asks councillors to be prepared to engage with officers in appropriate pre-application discussions.
- 7.5 In order to avoid perceptions that councillors might have fettered their discretion in any pre application discussions, **such discussions should take place within clear guidelines. These guidelines need to be developed by an authority and published to assist councillors and officers.** Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken. In addition to any guidelines to deal with specific local circumstances, a protocol should include:

- clarity at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information may be at hand, nor will formal consultations with interested parties have taken place;
- consistent advice should be given by officers based upon the development plan and material considerations. There should be no significant difference of interpretation of planning policies amongst planning officers. It is officers' role to ensure consistency of advice and officers should therefore be present with councillors in pre application meetings. All officers taking part in such discussions should make clear whether or not they are the decision-maker. Councillors should avoid giving separate advice on the development plan or material considerations as they may not be aware of all the issues at an early stage. Neither should they become drawn into any negotiations. They should ask their officers to deal with any necessary negotiations to ensure that the authority's position is co-ordinated;
- a written note should be made of all meetings. An officer would best make the arrangements for such meetings, attend and write

a follow-up letter. A note should also be taken of similar telephone discussions. The note should be placed on the file as a public record to show a transparent approach. Sometimes confidentiality is needed and should be respected. However the need for this can easily be exaggerated and confidentiality of advice by representatives of a public body on a planning matter will rarely be justified even if the applicant's interest is sensitive. If there is a legitimate reason for confidentiality regarding the proposal, a note of the non-confidential issues raised or advice given can still normally be recorded on the file to reassure others not party to the discussion;

- care must be taken to ensure that advice is not partial (nor seen to be), otherwise the subsequent report or recommendation to committee could appear to be advocacy; and
- the decision as to whether to establish a register for everyday contacts between councillors and interested parties will depend on local circumstances. Many councillors will be talking regularly to constituents to gauge their views on matters of local concern, and such a register may be considered, as the Nolan Committee argued, impractical and unnecessary. Councillors will, however, need to register any gifts and hospitality received as a requirement of the code.

7.6 Consideration needs to be given to when to involve other consultees and the community in pre-application discussions. Some authorities have been very successful in engaging their councillors and communities by having public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. The advantages of the authority setting up such forums are the transparency of process, and the ability of ward councillors and other councillors to seek information and identify important issues for the proposal to address, without the risk of planning councillors having engaged with developers in such a way as to suggest they have pre-determined themselves. Members should also be aware of the code of conduct which means that they should not use their position to improperly influence decisions. This provision does not only apply to councillors when they are in a committee meeting.

7.7 Authorities also have other mechanisms to involve councillors in pre-application discussions including:

- committee information reports by officers of discussions from which councillors can identify items of interest and seek further information and raise issues for consideration;

- developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be;
- ward councillor briefing by officers of the content of initial pre application meetings held.

7.8 The 2007 CLG report on *Member Involvement in Planning Decisions*, the 2007 London Councils report on *Connecting Councillors with Strategic Planning Applications*, and the 2007 POS Enterprises Development Management practice guidance note on *Councillor involvement in pre-application discussions* provide examples and advice for those interested in developing appropriate protocols for their authority. Full references are given at the end of this document.

7.9 Statements of Community Involvement required as part of the LDF need to be reviewed to see whether mechanisms for such dialogue are already in place, or if the statement needs to be updated to reflect the council's approach.

officer reports to committee

8.1 The courts and Ombudsman advice have determined officer reports on planning applications must have regard to the following points:

- reports should be accurate and cover, amongst other things, the substance of any objections and the views of those consulted;
- relevant information should include a clear exposition of the development plan; site or related history; and any other material considerations;
- reports should have a written recommendation of action. Oral reporting (except to update a report) should be avoided and carefully minuted when it does occur;
- reports should contain technical appraisals which clearly justify a recommendation;
- if the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify the departure must be clearly stated.

It is particularly important to do so, not only as a matter of good practice, but because failure may constitute maladministration, or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the development plan and the council's statutory duty under s38A of the Planning and Compensation Act 2004.

public speaking at planning committees

- 9.1 The principle of whether or not public speaking should be allowed at a planning committee is very much a matter for the local authority concerned. A majority of authorities now provide such an opportunity. The benefits seen by those authorities are that public confidence is generally enhanced and that direct lobbying may as a result be reduced. The disadvantage is that the approach may lengthen meetings and make them marginally more difficult to manage. However, where public speaking is allowed, it is important that clear protocols are established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors arrangements. In addition, in the interests of equity, the time allowed for presentations for and against the development should be identical, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.
- 9.2 Documents not previously submitted should not normally be circulated to the committee as all parties may not have time to react to the submissions, and councillors may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This should also be told to those who intend to speak.

The acceptance of circulated material could imply a willingness to take the necessary time to investigate any issues raised and lead to the need to defer the application or risk a complaint about the way the material has been considered. For similar reasons, messages passed to members sitting in planning committees should be avoided. Care needs to be taken to avoid the perception of external influence or bias.

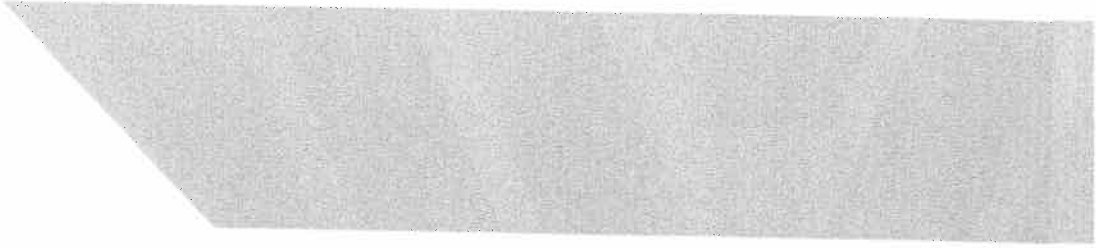
decision contrary to officer recommendation and/or the development plan

10.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations indicate otherwise (s38A Planning & Compensation Act 2004).

10.2 This gives rise to two main issues. Firstly, all applications which are not in accordance with the development plan must be identified and advertised as such. Secondly, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated. The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.

10.3 The Association of Council Secretaries and Solicitors' *Model Planning Code* advises planning committees to take the following steps prior to making a decision contrary to officers' recommendations:

- encouraging the formation of tentative reasons by discussing a predisposition with planning officers beforehand;
- writing down the reasons as part of the mover's motion;
- adjourning for a few minutes for those reasons to be discussed;
- if a very strong objection from officers on validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

- 
- 10.4 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain in full their reasons for not agreeing with the officer's recommendation. In so doing, members should observe the 'Wednesbury principle' (the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223) which, put simply, requires all relevant information (ie material considerations) to be taken into account and all irrelevant information (ie non-material matters) to be ignored.
- 10.5 The courts have expressed the view that the committee's reasons should be clear and convincing. The personal circumstances of an applicant, or any other material or non-material considerations which might cause local controversy, will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, the provision of a dwelling for an agricultural worker.

The officer should also be given an opportunity to explain the implications of the contrary decision.

regular review of decisions

- 12.1 The report of the Audit Commission Building in Quality recommended that councillors should revisit a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, strengthening public confidence in the planning system, and can help with reviews of planning policy.
- 12.2 Such reviews are best undertaken at least annually. They should include examples from a broad range of categories such as major and minor development; permitted departures; upheld appeals; listed building works and enforcement cases. Briefing notes should be prepared on each case. The planning committee should formally consider the review and decide whether it gave rise to the need to reconsider any policies or practices.
- 12.3 Scrutiny committees may be able to assist in this process but the essential purpose of these reviews is to assist planning committee members to refine their understanding of the impact of their decisions from the visiting of completed developments. It is therefore important for planning committee members to be fully engaged in such reviews.

committee site visit

- 11.1 Earlier enquiries revealed little consistency amongst councils on the operation of site visits, both in terms of why they are held and how they are conducted. While a variety of approaches can be healthy, the lack of any common approach on when and why to hold a site visit and how to conduct it can leave a council open to the accusation that such visits are arbitrary and unfair or a covert lobbying device. A protocol setting out the arrangements for a council could be used to encourage consistency and transparency of process.
- 11.2 The code applies whenever the councillor is conducting official business, which will include site visits. Councils should set out the criteria for deciding when a site visit is justified and consider the procedures for such visits. In doing so, the following points may be helpful:
- site visits can cause delay and additional costs and should only be used where the expected benefit is substantial; officers will have visited the site and identified material considerations on behalf of the council;
 - they should be carefully organised to ensure that the purpose, format and conduct are clearly established at the outset and subsequently adhered to throughout the visit;
 - many councils allow site visits to be 'triggered' by a request from the ward councillor. It is acknowledged that this may be a proper part of the representative role of the member, and should normally be considered if allowed for in any local planning guidance, although the 'substantial benefit' test should still apply. It is also good practice to keep a record of the reasons why a site visit is called.
- 11.3 A site visit is only likely to be necessary if:
- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers (although if that is the case, additional illustrative material should have been requested in advance); or
 - there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing, or the proposal is particularly contentious.
- 11.4 Site visits consisting simply of an inspection by a viewing sub-committee, with officer assistance, are in most cases the most fair and equitable approach. An inspection could be unaccompanied (ie without applicant and objectors) or accompanied but run on the strict lines of a planning inspector's site inspection, ie not allowing arguments to be expressed on site.

complaints and record keeping

- 13.1 Whatever procedures a council operates, it is likely that complaints will be made. However, the adoption of the advice in this guidance should greatly reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 13.2 A logical consequence of adopting good planning practice guidance is that a council should also have in place a robust complaints system. Such a system may well apply to all council activities, but a council should consider specifically how planning-related complaints will be handled, in relation to the code of good practice.
- 13.3 So that complaints may be fully investigated and as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could cause a complaint or undermine a council's case. The guiding rule is that every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved in that application to understand what the decision was, and why and how it had been reached. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by members. These principles apply equally to enforcement and development plan matters.

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Local Government Association

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AGENDA ITEM NO.7

REPORT TO STANDARDS COMMITTEE

Date of meeting: 28th September 2009

NOTIFICATION PROCEDURES FOR COMPLAINTS AGAINST COUNCILLORS

Summary

The Standards Board for England has suggested that each parish council should adopt procedures for notifications as part of their Standing Orders. This will make it clear at the outset as to how the parish council will deal with notifications that it receives from the Monitoring Officer as part of the local assessment process.

Recommendation

- (1) To note the contents of the report; and
- (2) To consult town and parish councils on the proposed Policy set out in paragraph 2 of the report

1 Background

1.1 When a complaint about a parish or town councillor is being considered, the Monitoring Officer is required to notify the parish/town council of certain information at various stages of the case handling process. Each complaint will raise different issues and some will be of a more sensitive, confidential or private nature than others.

1.2 The notifications serve a number of useful purposes. For example if a parish/town council is provided with a notice at the early stages of a complaint, then the parish/town council will know that there may be a requirement to provide and preserve evidence in relation to a particular complaint. Parish/Town councils will also know if they need to make appropriate arrangements between a member and an employee where the complaint has been made by the employee.

It is recommended by the Standards Board, that the following information should be included in the procedures:-

- Who should deal with and be informed of such notifications when they are received;
- Whether they should be included on a meeting agenda;
- If the notification is included in an agenda item, whether this should be dealt with in the public or confidential part of the meeting; and

- Who will deal with providing further evidence or information needed by the Standards Committee in respect of a complaint.

1.3 It is recommended by the Standards Board for England that each parish council adopts procedures for notifications. This will make it clear from the onset how the council will deal with notifications. Any procedures should take into account the nature of the complaint and content of the notification.

1.4 It is recommended by the Standards Board that the following information should be set out in the procedures:

- Who should deal with and be informed of such notifications when they are received.
- Whether they should be included on a meeting agenda.
- If the notification is included as an agenda item, whether this should be dealt with in the public or confidential part of the meeting.
- The procedure should take into account who will deal with providing further evidence or information needed by the local Standards Committee in respect of a complaint.

2 Draft Policy:

- 1 Code of Conduct Complaint Notifications will be received by the Parish Clerk from the Monitoring Officer.
- 2 If no further action is determined by the Local Assessment Sub Committee then the Notification is retained on file with no disclosure to other Members.
- 3 If there is to be a local investigation and 'rare circumstances' regarding confidentiality do not apply then reference to the complaint shall be reported to Council in Open Session.
- 4 If 'rare circumstances' regarding confidentiality do apply then the complaint shall be reported to Council in Closed Session.
- 5 The Parish Clerk shall provide on request further information to assist investigation unless the complaint is made by the Clerk, when the Deputy Clerk shall provide any further information to assist investigation.
- 6 In the event that both the Clerk and the Deputy Clerk are joint complainants then the Council Chairman or failing him(her) the Vice Chairman, shall provide any further information to assist investigation.
- 7 The nature of further information provided to assist an investigation shall remain confidential and not shared with councillors.
- 8 The final determination of an investigation will be reported to Council in Open Session in the same way that the local Standards Committee makes it public.

3. Recommendation

That the Monitoring Officer consults parish and town councils through their clerks upon the draft policy and reports the results of the consultation to the next meeting of the Standards Committee.

4 Financial Implications

None

5 Statutory Consideration

None

6 Risk Assessment

The establishment and adoption of a procedure for dealing with notifications will reduce the likelihood of confidential information being released.

7 Access to Information

None.

REPORT TO STANDARDS COMMITTEE

Date of meeting: 28th September 2009

NEW STANDARDS COMMITTEE REGULATIONS 2009

Summary

A report to advise members of the new regulations in relation to the suspension of arrangements for the local initial assessment of complaints, the power for local authorities to establish joint standards committees and the power for standards committees to grant dispensations to local authority members to allow them to participate in meetings even when they have prejudicial interests.

Recommendation

That Standards Committee note the provisions of the new regulations.

1 Background

1.1 The Government has recently made regulations to implement some of the outstanding provisions relating to standards introduced by the Local Government and Public Involvement in Health Act 2007. The Standards Committee (Further Provisions) England Regulations 2009 (Statutory Instrument 2009/1255) cover the power of the Standards Board for England (which has changed its name to Standards for England) to suspend arrangements for the local initial assessment of complaints, the power for local authorities to establish joint standards committees and the power for standards committees to grant dispensations to local authority members to allow them to participate in meetings even when they have prejudicial interests.

1.2 These regulations came into force on 15 June 2009. The provisions on dispensations apply to relevant authorities in England (county councils, county borough councils, district councils, London borough councils, parish councils, community councils, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, the Common Council of the City of London in its capacity as a local authority or police authority, the Council of the Isles of Scilly, fire and rescue authorities constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies, police authorities, joint authorities established by Part IV of the Local Government Act 1985, the Broads Authority, and National Park authorities established under section 63 of the Environment Act 1985) and police authorities in Wales. The provisions on suspension of initial assessment functions and joint standards committees apply only to relevant authorities in England.

2 Initial Assessment of Complaints

2.1 The Local Government and Public Involvement in Health Act 2007 amended Part III of the Local Government Act 2000, which regulates the conduct of local authority members. The 2007 Act introduced a system in which assessment of allegations of breaches of the Code of Conduct of local authorities would be undertaken by the local authorities' own standards committees. However, provision was made, at section 57D of the Local Government Act 2000, for the Standards Board for England in prescribed circumstances to suspend the initial assessment functions of local standards committees and direct them to refer allegations to the Standards Board for England or to the standards committee of another local authority. These regulations specify the circumstances in which the Standards Board for England may give such a direction. These are:

- The standards committee has failed to have regard to guidance issued by the Standards Board.
- The standards committee has failed to comply with a direction issued by the Standards Board.
- The standards committee or the local authority's Monitoring Officer has failed to carry out functions in a reasonable time or a reasonable manner.
- The local authority or its standards committee has invited the Standards Board to give a direction.

2.2 Before giving a direction suspending functions of a standards committee, the Standards Board must notify the authority in writing. This notice must set out the Standards Board's intention to give a direction and the reasons for this and set a date, no later than six months from the date on which the notice is served, before which a direction may be given. The Standards Board must send a copy of the notice to the chair of the standards committee and the Monitoring Officer. The notice must give the authority at least 28 days to submit observations to the Standards Board and the Standards Board must take account of any observations it receives before deciding whether to give a direction.

2.3 If the Standards Board decides to go ahead with giving a direction, it must serve this in writing on the authority specified in the direction. It must send a copy to the chair of the standards committee and the Monitoring Officer of the specified authority and also to the chair of the standards committee of any other authority referred to in the direction. A direction issued by the Standards Board must include the following:

- Details of the date from which it is to take effect
- Reasons why it has been given
- Details of the identity of any body which will deal with the initial assessment of any written allegations received by the standards committee
- A requirement for the specified authority to arrange for details of the direction to be published in at least one local newspaper, on the authority's web page if the Standards Board considers this appropriate,

and in any other publication considered appropriate by the Standards Board.

2.4 If the Standards Board gives such a direction, the regulations provide for the Standards Board to revoke it if it is satisfied that the circumstances which led to the direction no longer apply. It must do this by serving written notice on the specified authority. As with the direction, a copy of the revocation notice must be sent to the chair of the standards committee and the monitoring officer of the specified authority and also to the chair of the standards committee of any other authority referred to in the direction. It must also require the authority to arrange for details of the direction to be published in at least one local newspaper, on the authority's web page if the Standards Board considers this appropriate, and in any other publication considered appropriate by the Standards Board.

2.5 Whilst a direction from the Standards Board remains in force, the Standards Board may serve a notice on the relevant authority, specifying a different body to deal with the initial assessment of written allegations received by the standards committee. A copy must be sent to the chair of the standards committee and the Monitoring Officer of the specified authority and also to the chair of the standards committee of any other authority referred to in the direction.

3 Joint Standards Committees

3.1 The regulations allow two or more local authorities to set up a joint standards committee to discharge all or some of their standards functions in Part III of the Local Government Act 2000 or functions relating to local authority members, officers, staff and committees in Part I of the Local Government and Housing Act 1989.

3.2 Once a local authority has arranged for a joint standards committee to have responsibility for a particular function, the individual local authority would no longer be able to exercise that function itself. If a joint standards committee is responsible for all the functions of a standards committee under Part III of the Local Government Act 2000 and Part I of the Local Government and Housing Act 1989, then the joint standards committee is to be treated as the standards committee of each of the local authorities that set it up.

3.3 The membership of a joint standards committee must include at least one member from each local authority that establishes it but it must not include any more than one member of the executive of any of those local authorities in total. Joint standards committees are also able to appoint independent members separately or independently in accordance with the requirements of the Standards Committee (England) Regulations 2008. There are also requirements for a member of each authority which establishes a joint standards committee to be present at meetings where particular functions are discharged in order for the meeting to be quorate and for at least one parish council member to be present when this relates to a member or a former member of a parish council.

3.4 The local authorities which establish a joint standards committee must agree its terms of reference and send details of these to the Standards Board. They must also send the Standards Board details of any revisions to the joint standards committee's terms of reference. The terms of reference must do the following:

- Identify the joint standards committee's functions
- Make provision for its administrative arrangements
- Specify, for each authority involved in the establishment of a joint standards committee, which committee is the standards committee to which written allegations of breach of the authority's code of conduct may be sent
- Specify the number of members to be appointed to the joint standards committee by the authorities establishing it
- Make provision for the joint standards committee to appoint members to its sub-committees
- Specify what provision is made for the payment of allowances to members of the joint standards committee
- Make provision for an authority to withdraw from the joint standards committee upon service of notice.

3.5 The regulations provide for the expenses of a joint committee to be met by the authorities that establish it, in the proportions they agree. If they disagree, the regulations provide for the proportions to be determined by a single arbitrator agreed on by the appointing authorities.

3.6 The Standards Board's power to give a direction to suspend the initial assessment functions of a standards committee applies in respect of joint standards committees.

3.7 The Standards Board has published guidance documents on the establishment of joint standards committees. A copy of the guidance is attached to the report.

4 Dispensations

4.1 The Members' Codes of Conduct requires members to withdraw from meetings of their authorities when any matter in which they have a prejudicial interest is being discussed. However, they are not required to do so if they have obtained a dispensation from their local authority's standards committee. The new regulations introduce new provisions to clarify the grounds on which standards committees may grant dispensations to a member. These are:

- The transaction of business of the authority would be impeded because either more than 50% of the members who would otherwise be entitled to vote at a meeting would be prohibited from voting unless they are granted a dispensation or the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting unless dispensations are granted, and
- The member has submitted a written request to the standards committee for a dispensation, explaining why it is desirable, and

- The standards committee concludes that, having regard to the fact that the business of the authority would otherwise be impeded and to the written request and to any other relevant circumstances, it is appropriate to grant the dispensation.

4.2 Standards committee must ignore any dispensations that have already been given to others at the meeting to decide whether the grounds apply

4.3 Dispensations may be granted for speaking only for speaking and voting. The 2007 Code of Conduct relaxed the provisions restricting members from speaking. Therefore the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

4.4 The regulations restrict the grant of a dispensation to business conducted during the period of four years after the date on which the dispensation is granted. They also prohibit the grant of a dispensation to allow a member of an overview and scrutiny committee to participate in the scrutiny of a decision in which that member was involved or to allow an individual member of a local authority's executive to exercise executive functions solely.

4.5 The regulations require standards committees to ensure that the granting of any dispensation is recorded in writing and that this is kept with their local authority's register of members' interests.

4.6 The Standards Board has published guidance documents on the granting of dispensations which is attached to the report.

5 Financial Implications

None

6 Statutory Consideration

The Standards Committee (Further provisions) England Regulations 2009.

7 Risk Assessment

Failure to observe the provisions of the regulations may result in the Council and/or Committee acting unlawfully

8 Access to Information

- The Standards Committee (Further provisions) England Regulations 2009.
- Standards Board Guidance on the establishment of joint standards committees and on the granting of dispensations