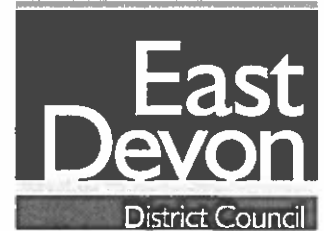


Date: 23 October 2009
Contact number: 01395 517543
E-mail: cholland@eastdevon.gov.uk
Our Reference: CEH/StandardsCom



To: Members of the Standards Committee
(Cllr P Bowden, Mr E Butt, Cllr G P Chamberlain, Mr R Davison,
Cllr G K Liverton, Cllr Mrs A E Liverton, Cllr S Pollentine,
Cllr C Richards, Cllr Mrs K Tomkins, Ms A Willan)

Chief Executive
Monitoring Officer
Head of Legal, Licensing and Democratic Services
Democratic Services Manager

East Devon District Council
Knowle
Sidmouth
Devon
EX10 8HL

DX 48705 Sidmouth

Tel: 01395 516551

Fax: 01395 517507

www.eastdevon.gov.uk

Dear Sir/Madam

**Standards Committee
Tuesday 3 November at 9.30 am**

The above meeting will be held in the Committee Room at East Devon District Council Offices, Knowle, Sidmouth, to consider the matters detailed on the agenda below.

Yours faithfully,

MARK WILLIAMS

Chief Executive

Members of the public are welcome to attend this meeting.

- A period of 15 minutes has been provided to allow members of the public to raise questions.
- In addition, after a report has been introduced by the relevant Portfolio Holder and/or officer, the Chairman of the Committee will ask if any member of the public would like to speak in respect of the matter and/or ask questions.
- All individual contributions will be limited to a period of 3 minutes – where there is an interest group of objectors or supporters, a spokesperson should be appointed to speak on behalf of group.
- The public is advised that the Chairman has the right and discretion to control questions to avoid disruption, repetition and to make best use of the meeting time.

AGENDA

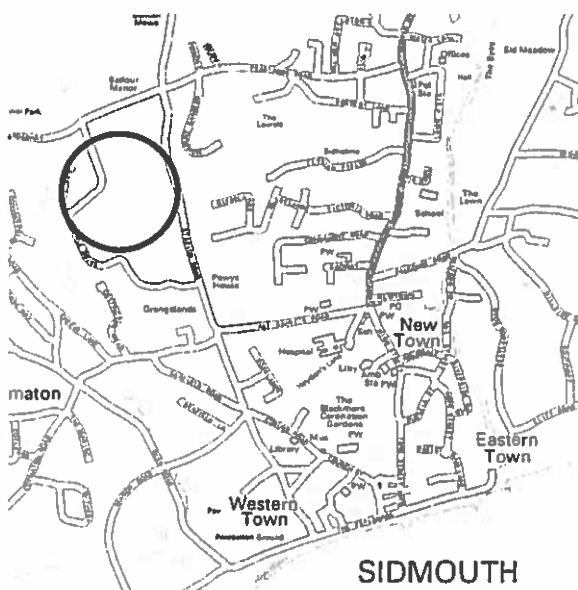
Part A

		Page/s
1	Public question time – standard agenda item (15 minutes) Members of the public are invited to put questions to the Committee through the Chairman. <ul style="list-style-type: none"> ▪ Each individual questioner exercising the right to speak during this public question time is restricted to speaking for a total of 3 minutes. ▪ Councillors also have the opportunity to ask questions of the Leader and/or Portfolio Holders during this time slot whilst giving priority at this part of the agenda to members of the public. ▪ The Chairman has the right and discretion to control question time to avoid disruption, repetition, and to make best use of the meeting time. 	
2	To receive any apologies for absence	
3	To confirm the minutes of the meeting held on 17 March 2009	4-6
4	To receive any declarations of interests relating to items on the agenda.	
5	To agree any items to be dealt with after the public (including the press) have been excluded. There are no items which Officers recommend should be dealt with in this way.	
6	To consider any items which in the opinion of the Chairman, should be dealt with as matters of urgency because of special circumstances. (Note: Such circumstances need to be identified in the minutes. If you wish to raise a matter under this item, please do so in advance of the meeting by notifying the Chief Executive who will then consult with the Chairman).	
7	Spending of Locality Budgets by DCC Members in an election year	Monitoring Officer 7-12
8	Review of the Standards Committee Procedure for Local Assessment of Complaints and Summary of complaints to date	Monitoring Officer 13-27
9	Probity in Planning	Monitoring Officer 28-82
10	The Standards Committee (Further Provisions) Regulations 2009	Head of Legal Licensing and Democratic Services 83-100
11	Memorandum of understanding between Standards for England and the Local Government Ombudsman	Head of Legal Licensing and Democratic Services 101-110
12	Report of Annual Assembly of Standards Committees	Ray Davison 111-114
13	Standards for England: Standards and Ethics – Good Practice	Monitoring Officer 115-133
14	Member Development (Training) – up-date	Democratic Services Manager 134-141
15	Standards Committee Forward Plan	142
16	Date of Next meeting – currently programmed for Tuesday, 16 March, 2009	

Members remember!

- You must declare any personal or prejudicial interests in an item whenever it becomes apparent that you have an interest in the business being considered.
- Make sure you say the reason for your interest as this has to be included in the minutes.
- If your interest is prejudicial you must leave the room unless you have obtained a dispensation from the Council's Standards Committee or where Para 12(2) of the Code can be applied. Para 12(2) allows a Member with a prejudicial interest to stay for the purpose of making representations, answering questions or giving evidence relating to the business but only at meetings where the public are also allowed to make representations. If you do remain, you must not exercise decision-making functions or seek to improperly influence the decision; you must leave the meeting room once you have made your representation.
- You also need to declare when you are subject to the party whip before the matter is discussed.

Getting to the Meeting – for the benefit of visitors



The entrance to the Council Offices is located on Station Road, Sidmouth. Parking is limited during normal working hours but normally easily available for evening meetings.

The following bus service stops outside the Council Offices on Station Road:
From Exmouth, Budleigh, Otterton and Newton Popleford – 157

The following buses all terminate at the Triangle in Sidmouth. From the Triangle, walk up Station Road until you reach the Council Offices (approximately ½ mile).

- From Exeter – 52A, 52B**
- From Honiton – 52B**
- From Seaton – 52A**
- From Ottery St Mary – 379, 387**

Please check your local timetable for times.

The Committee Suite has a separate entrance to the main building, located at the end of the visitor and Councillor car park. The rooms are at ground level and easily accessible; there is also a toilet for disabled users. The doors to the civic suite (meeting rooms) will be opened ¼ hour before the start time of the meeting. Councillors are reminded to bring their key fobs if they wish to access the area prior to that time. A hearing loop system will be in operation in the Council Chamber.

For a copy of this agenda in large print, please contact the Democratic Services Team on 01395 517546

EAST DEVON DISTRICT COUNCIL

Minutes of a Meeting of the Standards Committee held at Knowle, Sidmouth on 17 March 2009

Present:	Mr E Butt	Independent Chairman
	Cllr P Bowden	EDDC Councillor
	Cllr G P Chamberlain	EDDC Councillor
	Mr R Davison	Independent member
	Cllr Mrs A E Liverton	EDDC Councillor
	Cllr S P Pollentine	Parish representative
	Cllr C Richards	Parish representative
	Cllr Mrs K Tomkins	Parish representative
	Ms A Willan	Independent member
Officers:	Denise Lyon	Monitoring Officer
	Diana Vernon	Democratic Services Manager

Apology: Cllr P Diviani EDDC Councillor

The meeting started at 9.30 am and ended at 10.25 am

*7 Minutes

The minutes of the meeting of the Standards Committee held on 20 October 2008 were confirmed and signed as a true record.

*8 Issues arising from the Minutes

Members were advised that the Monitoring Officer/her Deputy had yet to meet and consult with neighbouring Monitoring Officers in respect of possibly sharing Standards Committee Members when time and workloads permitted. A meeting had now been arranged with Mid Devon District Council to discuss a range of possible partnership working opportunities including sharing Standards Committee Members.

At its last meeting, Members had asked for steps to be taken to increase public awareness of the work of the Committee, highlighting probity and transparency in local government.

Members were advised that a press release had been drafted and would be issued in the near future. The Council could consider funding a poster campaign and details of the Standards Committee members would be put on the Council's web site as soon as all photographs had been received.

- RESOLVED**
- (1) that the Monitoring Officer meet and consult with neighbouring Monitoring Officers to discuss the possibility of sharing Standards Committee Members when time and workloads permit, with Members being up-dated on these discussions,
 - (2) that the draft press release setting out the work of the Standards Committee and changes to procedures be circulated to Members of the Committee,
 - (3) that photographs of the members of the Standards Committee be put on the Council's web site,
 - (4) that Standards Committee members be kept up to date on actions taken and advised should there be any delay in implementing decisions agreed.

***8 Code of Conduct Complaints in 2008**

Members noted the details of cases included in the agenda papers which were further clarified by the Monitoring Officer. The report included cases reported to the Monitoring Officer before and after changes in legislation - Code of Conduct allegations were now referred to the district council in the first instance whereas in the past, they had initially been considered by the Standards Board for England. The Local Assessment Framework had previously been agreed by the Committee. Details of costs to the Council were also identified and noted.

RESOLVED that the Code of Conduct complaints in 2008 be noted.

***9 Devon County Council Community Fund**

At the last meeting, Members raised concerns about the public perception of the distribution of Community Fund money by Devon County Councils in an election year. The Monitoring Officer had written to the DCC Standards Committee and had received a copy of the relevant DCC's Procedure Committee's minute together with a letter of advice to all Devon County Council members from the DCC Solicitor.

The Committee was not satisfied with the response as the letter raising concern had been sent specifically to the DCC Standards Committee and as yet a reply had not been received from that Committee. Members asked the Monitoring Officer to write again expressing the Committee's concerns particularly in respect of the County Solicitor's advice to Councillors that 'during the period 1 April to 4 June 2009 it would be very imprudent for any member to give anything that might appear to be a promise to make a locality budget payment after the elections should he or she be safely returned on 5 June'. Members felt that this advice was inadequate and did not address the concerns raised.

RESOLVED that the Chairman of the Standards Committee write, in consultation with the Monitoring Officer, to the Devon County Council Standards Committee and ask for a response to the EDDC's Standards Committee concerns about the use of the Community Fund by Devon County Councillors within 12 months of standing for re-election in June, with copies of all correspondence being sent to all Members of the EDDC Standards Committee.

***10 Annual Standards Board for England Conference**

RESOLVED that, subject to budget confirmation, Ray Davidson (Independent Member) attend the Eighth Annual Assembly of Standards Committees in Birmingham on 12 – 13 October 2009 and feedback key learning points to the Committee at its next meeting.

***11 Law Society consultation**

RESOLVED that the Monitoring Officer's response to consultation from the Law Society in respect of the Monitoring Officer/proposed Chief Legal Officer role be noted.

***12 Future dates**

- RESOLVED**
- (1) that a training session for the Standards Committee on Hearings be held on Tuesday 19 May 2009 from 10 am to 2pm (including lunch).
 - (2) that Officers arrange the next meeting of the Standards Committee to avoid any clash with the Annual Standards Assembly in October and to allow the Council's delegate to feedback key points from the Assembly to next meeting of the Committee. *(Members this date is now confirmed as Tuesday 3 November 2009).*

Chairman Date

Agenda Item 7

Standards Committee

3 November 2009

Locality Budgets



Spending of Locality Budgets by DCC members in an election year

Summary

Members of the Standards Committee in November 2008 raised the issue of the spending of County Council Community Fund Budgets during an election year.

It was suggested that the distribution of Community Fund money by County Councillors in an election year could be seen to be giving that Councillor an unfair advantage going into an election. It was also suggested that there was a public impression that Councillors might be 'buying votes' ahead of such a poll as in many cases the public did not understand that the money was from an existing County Council budget. The Committee felt that although they understood how the Community fund budget worked, many of the public did not, and that poor public perception could easily undermine the work of our Standards Committees.

The members asked the Monitoring Officer that the issue be raised with the County Council Standards Committee with a recommendation that the County Council considers putting a freeze on the distribution of Community Fund money for 12 months before any County Council Election.

The County Council has considered this recommendation and the minute of their decision is attached at Appendix A.

Recommendation

Members consider Devon County Council's response to the issue raised by this Committee of Community Fund Budgets.

a) Reasons for Recommendation

The original reasons for raising this issue with the County Council were:

- the distribution of Community Fund money by County councillors in an election year could be seen to be giving that Councillor an unfair advantage going into the election
- there was public impression that Councillors might be "buying votes" ahead of such a poll as in many cases the public did not understand that the money was from an existing County Council budget
- the Committee felt that although they understood how the Community Fund budget worked, many of the public did not, and that poor public perception could undermine the work of our Standards Committee

Members can now consider the response from the County's Standards Committee.

b) Alternative Options

Ignore the response.

c) Risk Considerations

Members to consider whether continuing this debate is a priority for this Committee.

d) Policy and Budgetary Considerations

None to note.

e) Date for Review of Decision

None recommended.

1 Main Body of the Report

The County Solicitor wrote to members on 11 February 2009 advising how the locality budgets should be used during the lead up to the County Council elections in June 2009 so that they were not used in a way that exposed members to criticism, or improper influence.

"Any member who still has funds available within his or her allocation for the current financial year needs to act quickly so that proposals to spend this money are approved during the next round of County Committees.

Locality budgets for the coming financial year cannot be tapped until after the elections. Thereafter they can be accessed under the normal arrangements – with the addition of course of any money carried forward from this year.

During the period 1 April to 4 June 2009 it would be very imprudent for any member to give anything that might appear to be a promise to make a locality budget payment after the elections should he or she be safely returned on 5 June."

The issue was considered by members at the County Standards Committee on 2 July 2009.

The County Solicitor advised that the County Council's Procedures Committee had, in his view, taken reasonable steps to ensure that no conflict arose. Recognising the need for Members to exercise caution in the use of their locality budgets in the period leading up to the County Council elections on 4 June 2009, that Committee had determined that approval to allocations could only be given by County Committees before 9 April 2009 and that, thereafter, the use of any such funds in 2008/09 or 2009/10 would be embargoed until after the June elections. Similarly, Members were not permitted to give any undertaking as to the allocation of funds in that period.

Members were therefore of the view that there had been no conflict of interest and that in restricting the use of these funds for a period well in advance of the Notice of Election the County Council had acted responsibly and no further action was required; the suggestion of the District Council that allocation of such funds should be prohibited for up to 12 months before election was regarded as excessive. (See Appendix A).

Legal Implications

Over and above the County Solicitor's advice for councillors not to use their locality budgets for an improper purpose, there are no specific legal implications.

Financial Implications

There are no financial implications on this Council.

Consultation on Reports to the Executive

None

Background Papers

- DCC Standards Committee minute, 02/07/2009 (Appendix A)
 - Letter dated 17/11/2008 from EDDC's Monitoring Officer to Devon County Council's Standards Committee Chairman (Appendix B)
 - Letter dated 11/02/2008 from County Solicitor to DCC members (Appendix C)
-

Denise Lyon
Monitoring Officer

Standards Committee
3 November 2009

Standards

Committee Minutes

Thu Jul 02 2009

Related Documents:

agenda for these minutes

Present:-

Professor Forsythe (Chairman), Mr Bull and Alderman Turner.

Councillors Berry, Sir Simon Day, Fry, Hook and Owen

*1 Minutes

RESOLVED that the minutes of the meeting held on 7 October 2009 be signed as a correct record.

*2 Questions from Members of the Public

There was no question from a member of the public.

*3 Matters of Urgency: Members Locality Budgets

(An item taken under Section 100B(4) of the Local Government Act 1972.)

The Chairman had decided that the Committee should consider this item, as a matter of urgency, in order that Members might be made aware of correspondence with the Chairman of the Standards Committee of East Devon District Council over the use by County Councillors of locality budgets in an election year.

The County Solicitor advised that the County Council's Procedures Committee had, in his view, taken reasonable steps to ensure that no conflict arose. Recognising the need for Members to exercise caution in the use of their locality budgets in the period leading up to the County Council elections on 4 June 2009, that Committee had determined that approval to allocations could only be given by County Committees before 9 April 2009 and that, thereafter, the use of any such funds in 2008/9 or 2009/10 would be embargoed until after the June elections. Similarly, Members were not permitted to give any undertaking as to the allocation of funds in that period.

Members were therefore of the view that there had been no conflict of interest and that in restricting the use of these funds for a period well in advance of the Notice of Election the County Council had acted responsibly and no further action was required; the suggestion of the District Council that allocation of such funds should be prohibited for up to 12 months before election was regarded as excessive.

The meeting started at 2.15pm and ended at 3.03pm.

*The Minutes of this Committee are published on the County Council's Website at:-
Council Decisions*

Date Published: Fri Jul 03 2009

Date: 17 November 2008
Contact number: 01395 517480
E-mail: dlyon@eastdevon.gov.uk
Direct Fax: 01395 517507
Our Reference: SC/CEH/DL
Your Reference:

Professor Forsythe
Chairman, Standards Committee
Devon County Council
County Hall
Topsham Road
Exeter
EX2 4QD

Dear Professor Forsythe

Distribution of County Council Community Fund Budgets in an election year

I am writing following a meeting of East Devon District Council's Standards Committee when the issue of the spending of County Council Community Fund Budgets during an election year was raised.

It was suggested during the last meeting that the distribution of Community Fund money by County Councillors in an election year could be seen to be giving that Councillor an unfair advantage going into an election. It was also suggested that there was a public impression that Councillors might be 'buying votes' ahead of such a poll as in many cases the public did not understand that the money was from an existing County Council budget. The Committee felt that although they understood how the Community fund budget worked, many of the public did not, and that poor public perception could easily undermine the work of our Standards Committees.

I have been asked that the issue be made aware to the County Council Standards Committee with a recommendation that the County Council considers putting a freeze on the distribution of Community Fund money for 12 months before any County Council Election. You will see that I have copied in Phil Norrey, Chief Executive, so that he is made aware of these concerns.

On behalf of East Devon's Standards Committee, I look forward to hearing from you.

Yours sincerely

Denise Lyon
Corporate Director
(Deputy Chief Executive and Monitoring Officer)

Cc: Phil Norrey, Chief Executive, Devon County Council

Roger Gash
County Solicitor

To all Members of the County Council

County Hall
Topsham Road
Exeter
Devon
EX2 4QD

Your ref:
My ref: RG/GM

Date: 11 February 2009
Please ask for: Mr Gash

Phone 01392 382285
Fax: 01392 382286

e-mail:
DX: 8345 EXETER

Dear Member

LOCALITY BUDGETS

Since it now seems very likely that the County Council elections will take place on 4 June the Procedures Committee earlier this week considered how to ensure that during the intervening period locality budgets are not used in a way that exposes members to criticism, however unfounded, of improper influence.

Accordingly:

- (1) Any member who still has funds available within his or her allocation for the current financial year needs to act quickly so that proposals to spend this money are approved during the next round of County Committees (beginning with South Hams on 13 March and ending with Exeter on 9 April);
- (2) Locality budgets for the coming financial year cannot be tapped until after the elections. Thereafter they can be accessed under the normal arrangements – with the addition of course of any money carried forward from this year.
- (3) During the period 1 April to 4 June 2009 it would be very imprudent for any member to give anything that might appear to be a promise to make a locality budget payment after the elections should he or she be safely returned on 5 June.

I hope the above is clear but I am happy to discuss any doubts which it may raise in members' minds.

Yours sincerely

COUNTY SOLICITOR

Agenda Item 8

Standards Committee

3 November 2009

MO/DL



Review of the Standards Committee Procedure for Local Assessment of Complaints and Summary of complaints to date

Summary

This report reviews the Standards Committee "Procedure for Local Assessment of Complaints" in the light of experience to date. It also gives members summary information about all the Code of Conduct complaints dealt with so far in 2009 in East Devon. Since May 2008 all Code of Conduct complaints received by the Monitoring Officer are now handled by this council in their entirety.

Recommendation

1. That the Standards Committee approves the amended Procedure for Local Assessment of Complaints attached at Appendix A.
2. That the Monitoring Officer makes any necessary amendments to the supporting documentation to the Procedure.

a) Reasons for Recommendation

The Procedure provides that an initial review is carried out after 6 months (or as necessary) from the adoption of the Procedure to ensure that it is working properly.

Members of the Committee can be aware of complaints against councillors in the District, Towns and Parish Councils of East Devon and discuss how these are being handled.

b) Alternative Options

Not applicable.

c) Risk Considerations

It is important to review and update the Procedure to ensure that it is up to date, relevant and in line with current law and best practice. This also supports good, relevant, lawful and consistent decision making.

Not understanding Code of Conduct issues in the District could limit the effectiveness of the Standards Committee.

d) Policy and Budgetary Considerations

The report supports our corporate priority: An inspirational council

e) Date for Review of Decision

I suggest on a biannual basis from now, and for a report to come to committee only if substantial changes are made.

Main Body of the Report

1. Background

- 1.1 The Local Assessment Procedure ("The Procedure") was set up in response to the Regulations issued in May 2008 which required local authorities to receive and consider complaints, and to conduct hearings with regard to alleged breaches of the Members' code of Conduct. Previously, these roles were primarily undertaken by the Standards Board for England.
- 1.2 The Procedure was drafted in accordance with the guidance issued by the Standards Board. This Procedure is now used in connection with the receipt and consideration of complaints and the review, should there be an appeal.
- 1.3 The first version of our Local Assessment Procedure included provision for an initial review after 6 months (or as necessary) from the adoption of the Procedure to ensure that it is working effectively.
- 1.4 Suggested amendments to the Procedure are set out in Appendix A. Deletions are shown with a strikethrough and additions are shown in italics.
- 1.5 Other parts of the complaints process are covered by our Local Investigation of Complaints Procedure, and I propose to review this in due course, then bring the revised version to this Committee.

2. Review

- 2.1 The Local Assessment Procedure is working well, and no major amendments are recommended. There are a few areas where amendments are suggested to improve clarity and understanding.
- 2.2 The Monitoring Officer will update forms and supporting documentation to ensure clarity and understanding.

3. Summary of complaints received 01/01/2009 – 30/09/2009

- 3.1 Attached at Appendix B is a table showing the number of complaints received. These have all been included in the quarterly returns to Standards for England, which show that to date we have had:

01 January 2009 – 31 March 2009	NIL return
1 April 2009 – 30 June 2009	6 cases (all were about the same issue)
1 July 2009 – 30 September 2009	9 cases (4 were about the same issue)

Legal Implications

Amendments have been suggested for inclusion in the revised procedure. Arrangements should be considered by the committee for appropriate publication of procedures, for example, on the Council's website, in line with statutory requirements.

Financial Implications

There are no financial implications.

Background Papers

Standards Committee (England) Regulations 2008 -

http://www.opsi.gov.uk/si/si2008/uksi_20081085_en_1

Standards for England guidance 'Local Assessment of Complaints'

<http://www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/Guidance/>

Standards for England 'Other Action Guidance' -

<http://www.standardsforengland.gov.uk/Guidance/TheLocalStandardsFramework/Guidance/>

Denise Lyon
Deputy Chief Executive and Monitoring Officer

Standards Committee
3 November 2009

East Devon District Council's

Standards Committee

Procedure for Local Assessment of Complaints

(Précis of Updates and Changes)

2.4 Responsibilities

In accordance with the Regulations, the Standards Committee has set up the following subcommittees:

- **The Assessment and Hearings sub-committee** which deals with the initial assessment of a complaint received by the Standards Committee. It also holds hearings following a Monitoring Officer investigation report and determines whether the Code has been broken, and if so considers what, if any, sanctions should be imposed. This procedure deals with local assessment, so for simplicity the sub-committee will be referred to as the Assessment sub-committee. It has also been appointed to deal with dispensation applications, although the Standards Committee retains the power to deal with these also.
- **The Review sub-committee** (made up of different members to the Assessment Sub-committee) which will deal with a request from the Complainant for a review of the initial decision (in cases where the Assessment Sub-committee has decided that no action should be taken)

The purpose of an assessment decision (or review) is to simply decide whether any action should be taken on the complaint. The Assessment and Review Subcommittees make no findings of fact.

4. Receipt of complaints

All complaints should be directed to the Standards Committee care of the Monitoring Officer (see "How to Complain" above).

The **Monitoring Officer** will:

- write to the Complainant to acknowledge receipt of the complaint within 5 working days of its receipt;
- tell the Councillor within 5 working days that a complaint has been made against him/her (unless confidentiality requested by Complainant - see below).

The Notification letter to the Councillor will:

- Say that a complaint has been received
- Give the name of the Complainant (unless confidentiality requested – see paragraph 10 below)
- Include the paragraphs of the Code which appear to be relevant
- Give the date of the Assessment Sub-committee (if known)

Please Note:

The notification letter to the Councillor will **not** include a written summary of the complaint. This can only be provided after the Assessment Sub-committee has met to consider the complaint.

- Where relevant, tell the Clerk that a complaint has been made against a town/parish councillor

- Where relevant, tell the County Solicitor at Devon County Council that a complaint has been made against a councillor who is also a Devon County Councillor.
- Add the complaint to the database of complaints using the reference system: authority/case number/date [EDDC/LSB-0].

The Democratic Service Officer will arrange for a meeting of the Assessment Sub-committee to be held within **20 working days** of the date of the receipt of the complaint, in order for it to decide whether or not any action should be taken.

The Notification letter to the Complainant will:

- Acknowledge receipt of the complaint
- Include the paragraphs of the Code which appear to be relevant
- Give the date of the Assessment Sub Committee (if known)

Comments: Included for clarity

5. Pre-assessment of complaints

5.1 Pre-assessment inquires

The Monitoring Officer may carry out any pre-assessment inquiries that she thinks might be necessary to help the Assessment Sub-committee at its meeting.

The Monitoring Officer will not make any enquiries that could amount to investigation, or ought properly be carried out at the investigation stage. Only easily obtainable, factual information (and not opinion) will be sought at the Pre-assessment stage of this procedure.

The Monitoring Officer may contact the Complainant for clarification of the complaint if it is not clear.

The Monitoring Officer may carry out pre-assessment inquiries such as:

- A copy of the Councillor's Declaration of Acceptance of Office/Undertaking to observe the Code
- Minutes of relevant meetings
- A copy of the Register of Interest
- Information from Companies House/Land Registry
- Other easily obtainable documents
- Clarification from the councillor as to whether s/he has apologised/intends to offer an apology for the conduct complained of

6.3 Initial tests

Before the Assessment Sub-committee begins to assess the complaint, it will ensure that the complaint meets the following initial tests:

Initial tests <u>to decide whether there has been a potential breach of the Code before assessing the complaint:</u>
Is a potential breach of the Code disclosed?
To assist with the initial test:
<ul style="list-style-type: none">Has the <u>Is the complaint been made against a councillor who is a named member of the Council (or one of its parish/town councillors)?**</u>
<ul style="list-style-type: none">Was the Councillor in office at the time of the alleged conduct?
<ul style="list-style-type: none">Was the Code of Conduct in force at the time of the alleged conduct?
<ul style="list-style-type: none">Would the complaint (if proven) be a breach of the Code under which the Councillor was operating at the time of the alleged misconduct?
<u>Comment: amended to make easier to follow.</u>

7.4 Assessment Sub-committee decides to take no further action

The Assessment Sub-committee cannot take any further action if the complaint does not disclose a potential breach of the Code.

The Assessment Sub-committee can also decide to take no action in respect of the complaint, even if there has been a potential breach of the Code, for example if the matter appears to be trivial. Please refer to the criteria in the next section.

8.5 Criteria - No Action to be taken in respect of the complaint

The Assessment Sub-committee must decide that no action should be taken ~~where the complaint does not disclose any potential breach of the Code~~ because:

- ~~The complaint does not disclose any potential breach of the Code~~
- The complaint does not satisfy the initial tests (see paragraph 6.3 above)
- There is insufficient information – the Complainant has not submitted enough information to allow the Assessment Sub-committee to make a decision
- Action has already been taken on a matter, and the Assessment Sub-committee believes that little or nothing can be gained from pursuing it further
- The conduct complained of happened so long ago that there would be little benefit in pursuing it
- The complaint is trivial or discloses a minor technical breach
- The complaint is malicious, politically motivated or tit-for-tat and the complaint is not sufficiently serious**
- The Complaint is covered by the Council's vexatious complaints procedure and the complaint is not sufficiently serious**

• The Councillor has provided a satisfactory remedy to the complaint
• It is an anonymous complaint (unless exceptionally serious)
Please see paragraph 12.3 for malicious or vexatious complaints

9. Notification of Assessment Decisions

9.1 The Assessment Sub-committee's decision will be set out in a **Decision Notice**. Within **five working days** of the decision being made, the Monitoring Officer will send the Assessment Sub-committee's Decision Notice to the relevant parties, including:

- the Complainant
- the Councillor
- Parish/town clerk (if relevant)
- *County Solicitor (if relevant)*
- The Standards Board (where referred for investigation by the Standards Board)

9.2 Referral for other action

The Monitoring Officer will write to the relevant parties with a Decision Notice explaining:

• What <i>action</i> is being proposed <i>and why</i>
• <i>Why the action is being proposed</i>
• Why the Councillor should co-operate
• What the Standards Committee hopes to achieve by the action
• That the complaint cannot be referred back to the Standards Committee
• That the Councillor needs to confirm in writing that s/he will co-operate with the action to be taken.
• The Monitoring Officer will report back after three months as to the outcome of other action with the possibility of further action being needed

9.5 No action to be taken

The Monitoring Officer will write to the relevant parties with a Decision Notice which will:

• Summarise the complaint
• Explain that no action is to be taken
• Give Reasons for the decision
• Explain that the Assessment Sub-committee cannot take any further action as the complaint does not disclose a potential breach of the Code. – for the reasons given.
• Advise the Complainant that s/he has a right to ask for a Review of the decision of "no action" to be taken.
• Advise the Complainant that s/he must ask in writing that the Standards Committee reviews its decision within 30 working days of receipt of the Decision Notice.

11. Review of initial decision

11.1 Review of initial decision

If the Assessment Sub-committee decides not to take any action on a complaint, the Complainant has the right to ask for a review of the decision.

The Complainant must ask for a review **within 30 days** of the date on the Initial Assessment Decision Notice (this is 30 days in total not working days).

The Complainant should lodge the request for the Review together with his/her reasons for the request. The contact details for lodging the review request are:

The Standards Committee
C/o the Monitoring Officer
East Devon District Council, Knowle, Sidmouth, EX10 8HL
Fax: 01395 517507
Email: monitoringofficer@eastdevon.gov.uk

The complaint will be reviewed by the **Review Sub-committee** which has a completely different membership from the Assessment Sub-committee that made the original decision.

The Review Sub-committee will carry out a review within **three months** of the receipt of the review request.

Within 5 working days of receipt of the request for a review, the **Monitoring Officer** will:

- write to the Complainant to acknowledge receipt of the review request
- tell the Councillor (unless confidentiality requested - see above) that a review request has been received
- inform the parish/town clerk/County Solicitor (where relevant)

13.7 Information to be supplied to the Standards Board

The Monitoring Officer is required to provide complaints information to the Standards Board for England on a quarterly *and annual* basis. The information relates to the number and type of complaints, and the outcome of Assessment and Reviews and Investigations.

13.9 Review of this procedure

The Monitoring Officer will ~~initially~~ review this procedure ~~within 6 months or as otherwise deemed necessary. The Procedure will then be reviewed every two years~~ 12 months or as otherwise necessary. Substantial amendments will be approved by the Standards Committee.

13.10 Approval of procedure

The Standards Committee approved this procedure on 20 October 2008.

The Standards Committee reviewed and approved this procedure on 3 November 2009.

Date rec'd & from	Town/Parish or EDDC member	Allegation	Assessment and Hearings Sub Committee - decision
11/06/09 Member of the public LSB13a	EDDC	Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting	Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect. Referral for other action: Personal training relating to the understanding of the Code of Conduct In addition, the Committee instructed the Monitoring Officer to arrange: <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Chairing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.
11/06/09 Member of the public LSB13b	EDDC members x 2	First member: Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting Second member: Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting	First member Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect. Referral for other action: Personal training relating to the understanding of the Code of Conduct Second member No further action In addition, the Committee instructed the Monitoring Officer to arrange: <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Chairing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.

Date rec'd & from	Town/Parish or EDDC member	Allegation	Assessment and Hearings Sub Committee - decision
12/06/09 Member of the public LSB13c	EDDC members x 2	<p>First member: Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Second member Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>First member Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect.</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct</p> <p>Second member No further action In addition, the Committee instructed the Monitoring Officer to arrange:</p> <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Chairing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.
15/06/09 Member of the public LSB13d	EDDC members x 3	<p>First member: Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Second member: Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Third member Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>First member Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect.</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct</p> <p>Second member No further action</p> <p>Third member No further action In addition, the Committee instructed the Monitoring Officer to arrange:</p> <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Chairing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.

Date rec'd & from	Town/Parish or EDDC member	Allegation	Assessment and Hearings Sub Committee - decision
22/06/09 Parish Clerk LSB13e	EDDC members x3	<p>First member: Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Second member: Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Third member Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>First member Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect.</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct</p> <p>Second member No further action</p> <p>Third member No further action</p> <p>In addition, the Committee instructed the Monitoring Officer to arrange:</p> <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Charing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.

Date rec'd & from	Town/Parish or EDDC member	Allegation	Assessment and Hearings Sub Committee - decision
24/06/09 Member of the public LSB13f	EDDC members x 2	<p>First member: Para3(1) acting disrespectfully Para 3(2)(b) by bullying Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p> <p>Second member: Para3(1) acting disrespectfully Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>First member Not to be investigated. Potential breach identified: Para 3(1), failing to treat others with respect.</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct</p> <p>Second member No further action</p> <p>In addition, the Committee instructed the Monitoring Officer to arrange:</p> <ul style="list-style-type: none"> • Training for all Members of the Development Management Committee on the process of dealing with planning applications in the public domain. In particular, how to handle public expectations and ensure decision making is, and is seen to be, fair, respectful and unbiased. • Chairing Skills Training for Chairman of Development Management Committee. • A review of the role of Officers and their support to Committee Members at Development Management Committee. • Chairman of Standards Committee to address Full Council and report the findings of this Sub Committee.
15/07/09 Member of the public LSB14a	Town councillor	<p>Para 12 by participating in council business despite having a prejudicial interest Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>Not to be investigated Potential breach: Para 5 bringing their office into disrepute</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct And Training for town clerk in advising members on Code of Conduct (particularly controversial issues).</p>
15/07/09 Member of the public LSB14b	Town Councillor	<p>Para 12 by participating in council business despite having a prejudicial interest Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>Not to be investigated Potential breach: Para 5 bringing their office into disrepute</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct And Training for town clerk in advising members on Code of Conduct (particularly controversial issues)</p>
24/07/09 Member of the public LSB14c	Town Councillor	<p>Para 12 by participating in council business despite having a prejudicial interest Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting</p>	<p>Not to be investigated Potential breach: Para 5 bringing their office into disrepute</p> <p>Referral for other action: Personal training relating to the understanding of the Code of Conduct And Training for town clerk in advising members on Code of Conduct (particularly controversial issues).</p>

Date rec'd & from	Town/Parish or EDDC member	Allegation	Assessment and Hearings Sub Committee - decision
24/07/09 Member of the public LSB14d	Town Councillor	Para 12 by participating in council business despite having a prejudicial interest Para 5 bringing their office into disrepute Para 6(a) by attempting to use position improperly at a committee meeting	Not to be investigated Potential breach: Para 5 bringing their office into disrepute Referral for other action: Personal training relating to the understanding of the Code of Conduct And Training for town clerk in advising members on Code of Conduct (particularly controversial issues).
20/08/09 Member of the public LSB11a	Parish Councillor	Para 12 by participating in council business despite have a prejudicial interest Para 5 bringing their office into disrepute Para 6a) by attempting to use position improperly at a committee meeting	Referred to MO for investigation Potential breach: Para 5 bringing their office into disrepute Para 3(1) failing to treat others with respect Para3(2)(a) acting in a way that may caused the authority to breach an equality enactment Para 6(a) using position improperly to confer or secure an advantage or disadvantage Para 8(1), 9(1) and 10(1) failing to declare a personal or prejudicial interest
01/09/09 Member of the public LSB12a	Town Councillor	Para 3(1) and Para 3(2)(b) that the member brought the office of councillor into disrepute and failed to treat others with respect	Referred to MO for investigation Potential breach: Para 3(1) failing to treat others with respect. Para 5 bringing an office or authority into disrepute
01/09/09 Member of the public LSB12b	EDDC member	The member failed to treat others with respect, brought the office of councillor into disrepute and used bullying or intimidating behaviour Para 3(1), Para 3(2)(b) and Para 3(2)(c) and Para 5.	Referred to MO for investigation Potential breach: Para 3(1) failing to treat others with respect. Para 5 bringing an office or authority into disrepute.
04/09/09 Town Clerk LSB15	Town Councillor	Alleged that the member has consistently used bullying or intimidating behaviour towards Town Clerk and his Office Manager and brought the office of Councillor into disrepute.	Referred to MO for investigation. Potential breach: Para 3(1) failing to treat others with respect; Para 3(2)(b) and Para 3(2)(c) using bullying or intimidating behaviour; Para 5 bringing an office or authority into disrepute.
22/09/09 Member of the public LSB17	Parish Councillor	Alleged member has acted in a dishonest manner when giving information to an Enforcement Office at EDDC.	Referred to Assessment Sub Committee 15/10/09

Agenda Item 9

Standards Committee

3 November 2009

DM



Probity in Planning

Summary

The Probity in Planning guidance notes have been circulated to all members of the Council, and are due to be considered by Development Management Committee and the Council this quarter. The guidance forms part of the ethical framework for local government and is an important document in helping councillors balance 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.

Recommendation

Members of Committee to consider the Probity in Planning guidance notes and related protocols which are due to be agreed by Council by December.

a) Reasons for Recommendation

Standards Committee members have the chance to contribute to the Council debate on this issue.

b) Alternative Options

Standards Committee members decide not to prioritise this piece of work for their attention.

c) Risk Considerations

Adopting good practice guidance and protocols mitigates against the risks of mishandling planning decisions.

d) Policy and Budgetary Considerations

These papers are in the process of going through the committee cycle and being adopted by Council.

e) Date for Review of Decision

Members may wish to come back to the guidelines at a future date if complaints over the coming year suggest the need.

1. Main Body of the Report

- 1.1. I have attached at Appendix A the Local Government Association 'Probity in Planning' document. It provides advice on achieving the balance between the dual roles of:
- 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.

- 1.2. Section 4 in the guidance explores the issue of interests under the Code of Conduct and also the concepts of predetermination, predisposition and bias in decision-making. These are important issues to understand and promote in order to ensure Development Management Committee members make, and are seen to make by the public, sound and fair decisions. In this way, we can hope to limit the potential for complaints from members of the public.
- 1.3. Appendix B includes the related protocols developed in-house by the Planning Service (one of them is not included as it has not been finalised yet but will be in the final papers going to Development Management Committee). These protocols build on the guidance in the paper and outline specific steps and constraints that apply to various parts of the planning process. They will be considered by Members in this quarter's committee cycle.
- 1.4. These documents are timely as they support the training we organised for Development Management Committee in October. They also complement the work we have been doing to support the Committee through a recent spate of highly contentious applications and public complaints. The complaints are both Code of Conduct related as well as procedural.
- 1.5. Appendix C shows the investigatory report into the 14 July 2009 Development Management Committee's consideration of the James Barn planning application (09/0137/FUL). This was sent to 16 complainants. In addition, the Assessment Sub Committee also recommended "other action" (training) in the case of one Development Management Committee member involved with this application.
- 1.6. Appendix D includes a letter from a resident, who has requested this Committee sees his complaint, complaining about the Development Management Committee's handling of the Longboat Cafe planning application. Although, we have not replied in full to this letter yet, I have included a copy of a full response to another resident who has raised similar issues.

Legal Implications

Protocols and guidance are helpful to members and officers in leading and supporting ethical conduct and lawful decision-making. However, the issues and material considerations that should be taken into account vary on a case by case basis, and the training and development members receive is intended to help them focus on these issues.

Financial Implications

There are no apparent financial implications.

Consultation on Reports to the Executive

As outlined in the report, the Appendices for these papers will be discussed at Development Management Committee before going to Council.

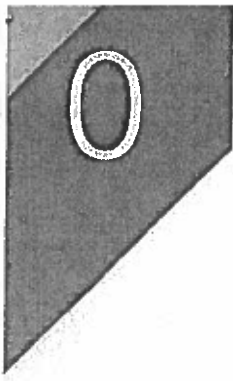
Background Papers

- Probity in Planning (including the references to other documents on p27 of the guidance)
- Development Management Service protocols

Denise Lyon
Monitoring Officer

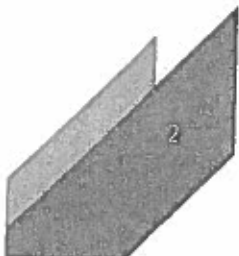
Standards Committee
3 November 2009

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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- 6 lobbying of and by councillors
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- 8 officer reports to committee
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probity in planning

foreword

- 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*

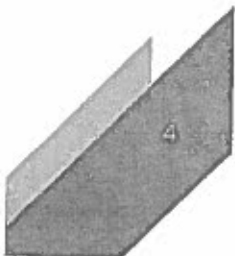
planning guidance note in 1997. However, since then a comprehensive ethical framework for local government was introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. Each authority is required to adopt a local code of conduct that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

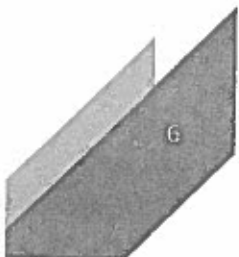
- 2.1 A lot has changed in expectations of the planning system since the previous LGA guidance was published.
- 2.2 Following the planning green and white papers, and subsequent legislation, planning is moving to the heart of local authorities place-shaping and community planning roles. Positive attitudes 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.




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- 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.

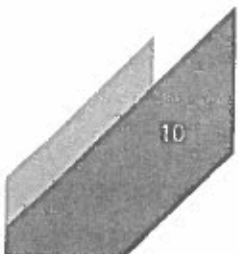
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- 4.5 A prejudicial interest would require withdrawal of the councillor from the committee. However, an exception has been included in the 2007 code. Where a councillor has a prejudicial interest in any business of the authority, they may attend a 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?



probity in planning



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



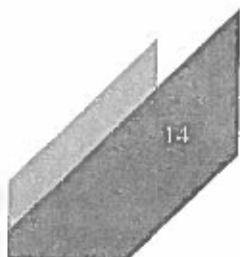
- 6.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a member of the planning committee. As the Nolan Committee's 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.



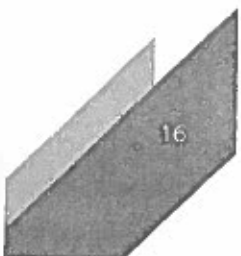
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- 6.9 A ward councillor who is also a member of the planning committee wishing to campaign for or against a proposal could speak at a planning committee on behalf of their constituents, having declared their pre-determined position. A pre-determined 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.

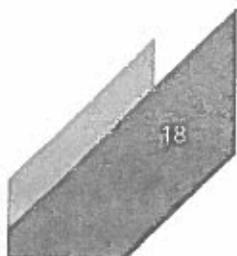


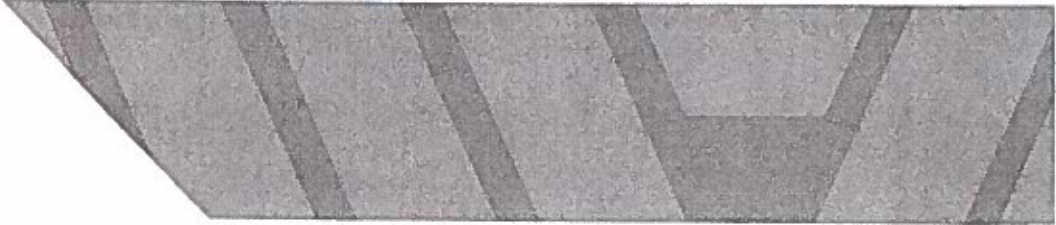
pre-application discussions



- 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.



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- 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

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- 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.

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- 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.

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

- 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.

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.

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.

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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promoting better local government

Code L09-280
ISBN 978-1-84049-682-6
Designed by Liberata Design Studio
Printed by Newman Thomson Ltd,
1 Jubilee Road, Burgess Hill, West Sussex RH15 9TL
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Members' Pre Application Panel Protocol

Should the view be that Members be involved in pre-application activity following the suggested as a way forward:-

Member's Planning Advisory Group to be comprised of:-

- The Chairman of the Development Control Committee.
- The Chairman of a possible Policy sub-committee or Policy Champion.
- Strategic Planning Portfolio Holder.
- Environment Portfolio Holder.
- Economy Portfolio Holder – as appropriate
- Communities Portfolio Holder as appropriate.
- Ward Members.

The system suggested for running this group would be as follows:-

- (i) Developers to make presentation to Member's Planning Advisory Group with Officers present.
- (ii) Members to have previously acquainted themselves with the site in question by a site visit.
- (iii) Members to ask questions of the Developers, seek clarification, test arguments but not to give any form of view in support or against the proposals.
- (iv) Advice on the way forward or changes to be made to the proposal would be provided by the Officers to the Developers in writing following advice from Members in a debate once the developers have left the meeting.
- (v) Any Member of the Planning Advisory Group who has a personal or prejudicial interest in the proposal should not form part of the group for that particular site.

Approved by Executive Board 6th June 2007

Pre-Application site visits by Members and Planning Officers Protocol

- Councillor(s) and Planning Officer(s) should have a quick briefing consultation before the appointment on site. The need for confidentiality should be established if a pre-application meeting.
- Councillor(s) and Planning Officer(s) should arrive and leave together.
- Both Councillor(s) and Planning Officer(s) represent the Council, not the potential applicant/landowner/business owner/objectors or supporters.
- Neither Councillor(s) and Planning Officer(s) shall attempt to influence the others whilst on site.
- Emphasis at the end of the meeting that written confirmation of points made at the meeting (once the draft has been seen by the Member(s) present. Advise that advice is informal only.
- To put parties together
- To seek solutions
- To seek information / clarification / facts
- To stay neutral – no views, or expressions of support or objection shall be given.

No Councillor should give pre-application without a planning officer present, not to be drawn into negotiations with applicants.

Approved by Executive Board 18th March 2009 ?

Calling Planning Application to Development Control Committee Protocol

Major and Minor Planning Applications

Under the delegation scheme a Ward Member may call any major or minor planning applications to Development Management Committee provided the request is made in writing to the Head of Planning & Countryside Services and based solely on matters of material planning concern.

Other/Householder Planning Applications

Where a Ward Member and the Head of Planning & Countryside Services are agreed on the recommendation (and the appropriate conditions for an approval) for a Other or Householder planning application the case will not be sent to the Development Management Committee for debate and a decision.

Where a Ward Member and the Head of Planning & Countryside Services disagree on the recommendation or conditions on an approval on Other or Householder planning application the following process will take place:-

That the proposed triggers for referring an application to Committee be amended as follows:-

- Once the report and recommendation has been drafted by the Senior Officer it will then be emailed to the relevant Ward Member(s) and copied to the DC Chairman (or Vice Chairman in their absence).
- The Ward Member will then have the opportunity to discuss the application with the senior officer if he chooses to do so or attend the delegation meeting and consider whether the material planning reasons stated, and the reason for committee decision, are sufficient to justify a committee decision being required.
- The final decision on whether or not an application goes to Committee will rest with the Chairman (or Vice Chairman) in their absence.
- The Chairman will urgently advise the relevant planning team as to whether the application should be delegated or go to Committee.

The final decision on wording to be made by the Corporate Director in consultation with the Chairman of the Working Group.

Under the present Delegation scheme the Head of Planning & Countryside Services has the unfettered right to send any planning application for determination by Development Management Committee.

Approved by Full Council 15th April 2009

Applicant Councillors and Officers and Council Development Protocol

Text.....

Being developed.

Approved by.....

Major Planning Applications Protocol

Pre-Application

1. When initial contact is made with the Planning Services regarding a proposal that will lead to a major application being submitted the following protocols come into play:
2. A project team meeting will be convened, this should comprise the following:
 - Planning Officer
 - Team Leader
 - Development Control Manager
3. The applicant/developer will be asked to put in writing details of the scheme and accompanying drawings.
4. On receipt of information, consideration of proposal to be undertaken by the project team, which will also include the Head of Planning Services, housing, environmental health, conservation, design and highways input as necessary.
5. If the matter is straightforward, the planning officer will give comments to the applicant by telephone or letter as appropriate.
6. If the matter is not straightforward and the project team agree a meeting with the applicant/developer is necessary the applicant/developer will be invited to meet with the project team. Officers will provide initial views as far as they can at this stage.
7. The Head of Planning Services will report the contact to Corporate Director – Environment and it will be flagged up at Departmental Management Team meeting and its progress will be tracked at DMT.
8. Where it is agreed that the Councils written comments are needed, a letter will be sent to the applicant with officers' views of the proposal. This will be within 4 weeks of the meeting.
9. When the applicant considers that the application is ready for submission a further meeting with the Project Team is advised. At such a meeting a multi- disciplinary presence will be available.
10. The meeting will establish the resources required to process the application and likely potential blocks, for example, will the Council require specialist consultants or additional admin support for extensive consultation; a potential block for example, may be the concerns of the Highway Agency regarding capacity of the M5 thus transport models and prior dialogue with the Highways Agency may be required before an application is lodged with the District Council; but it could also involve an SSSIs that would need English Nature involvement etc.
11. The meeting will identify key consultees, those individuals and organisations that need to be involved in the project, such as highways, economic development, environment agency etc.
12. The meeting will identify key documentation that will need to be submitted to support the application, such as:
 - Environmental impact assessment
 - Sustainability assessment
 - Ecological Appraisal

- Transport assessment
- Retail impact statement
- Design statement
- Conservation appraisals
- Appropriate flood assessment etc
- Access statement
- Details of proposed planning obligations

13. The likely case officer will be identified at this meeting and if appropriate a lead Project Officer.

14. If the scale of the development justifies a project officer approach the Project Officer will take over the ownership of this project in terms of processing the application.

15. The meeting will establish a likely date for the submission of the application and an anticipated determination date that assumes the applicant will submit the documentation identified at the meeting.

16. The Case Officer/Project Officer will identify a work programme/project timetable that will detail:

- Date for advertising application
- Consultation period
- Possible exhibition
- Public meetings
- Deadline for receiving any amendments to original proposal – the assumption being that all major applications will go through at least one revision in responding to consultation exercise.
- Deadline for writing reports to DC Committee
- Date of provision meeting for DC Committee
- Consideration of whether a steer from elected members is desirable prior to submission of the application.

Valid Applications

17. The Project Officer/case officer shall determine the number of documents/drawings to be submitted with the planning application and shall verify the application can be validated for processing.

18. The developer should be encouraged to find out local concerns before designs are finished.

19. The Planning & Admin Manager and Press Officer will be notified when an application is to be submitted and shall be involved during the consultation arrangements.

Post Submission

20. A project steering meeting of key officers will be set up and time-tabled to meet through to determination.

21. Consideration to be given to the involvement of the Building Control manager.

22. Minutes will be taken of the meeting and actions identified.

23. The minutes/action sheets will be forwarded to the Head of Planning Services for progress tracking at DMT.

Section 106 Agreements

24. The Head of Member and Legal Services shall be informed at the earliest possible opportunity about possible involvement in drafting heads of terms of Section 106 Agreement. If there is a capacity issue that may delay the drafting of the 106 agreement the Head of Legal and Members Services will determine whether the drafting will be put out to the private sector.
25. When a major application is to be recommended for approval subject to a section 106 agreement, a full list of the proposed heads of terms should be attached to the Committee report.
26. The proposed heads of terms should be discussed with the applicant.
27. The solicitor acting for the applicant should be identified and contact with the Council's solicitor should be established prior to Committee.
28. Confirmation must be sought that the Council's legal fees will be covered by the applicant.
29. A draft in full of the proposed conditions should be discussed with the applicant.
30. Developers should be encouraged to make available to the Project Officer the results of viability studies on a confidential basis.

Schemes Requiring Revisions

31. Central Government expects the Council to determine 60% of major applications, including the completion of associated legal agreements, within 13 weeks of the date of validation. The targeting of applications for a decision within this deadline will limit the opportunity to negotiate, or make changes to the submitted scheme.
32. Following validation it will not be possible to submit fresh drawings or modifications that alter fundamentally the nature and description of a proposed development. If this is desired then the submission of a fresh application will be necessary and the appropriate application forms will need to be completed.
33. In cases where a major application has been submitted without prior dialogue or where officers comments have been ignored, i.e., where significant revisions are required in order to make it acceptable, the application will be reported to Development Control Committee un-amended. The applicant will, however, have the option to withdraw the application prior to Committee decision and resubmit a revised scheme in the form of a new application.

Planning Inspection Committee Protocol

Site visits can cause delay in the process of determining planning applications and additional costs and should only be used where the expected benefit is substantial and a decision cannot be reached on the basis of the information provided by the Officers.

The reason(s) given by the Development Management Committee for a site visit must be recorded in the minutes of the meeting and be confirmed to the following overarching reason:-

- A site visit should normally only take place where the expected benefit of inspection to the decision making process is substantial and an appropriate decision cannot be taken without viewing the site and adjoining land/properties'.

Members of the Planning Inspection Committee will arrive together accompanied by a Planning Officer.

The following persons may also attend the site visit:-

- An invited Officer from another body e.g. a Highway Officer from Devon County Council or the Highways Agency, English Heritage, Environment Agency.
- A specialist officer from the Council e.g. an Environmental Health Officer, a Conservation Officer or an Arboricultural Officer.
- A representative from the Town or Parish Council in whose area the application site lies. Where an application site lies close to a Parish/Town boundary a representative from the adjoining Parish/Town may also attend.
- A Portfolio Holder or Member Champion with an interest in the proposal.
- The Chairman or Vice Chairman of the Council.

The following will not be permitted on the site:-

- The applicant, his/her agent or consultants (other than to allow access to the land/building)
- Objectors or supporters of the proposal.
- Councillors who are not the Ward Member(s).

The site visit is not part of the formal Planning Inspection Committee activity, but is an opportunity for Members of the Committee to see the site for themselves, in context and to seek clarification on matters of detail by asking questions. There shall be no debate on the site and no opinions or views will be expressed by any of the participants.

Kate Little
Head of Planning & Countryside Services
June 2009

Report on Complaint by residents of Kerswell in relation to James' Barn
Planning Application 09/0137/FUL



- 1.0 Introduction**
- 1.1 As you are aware, I have been asked to investigate the decision making process of the planning application for two poultry houses an agricultural access and the formation of internal access tracks at James' Barn, Kerswell. The complaints made by 14 households and the Clerk to Broadhembury Parish Council fall into a number of categories which I have dealt with individually. I have not, however, dealt with the matter of the actions of individual Councillors considered by the Standards Assessment Sub Committee at its meeting on the 14 July 2009. My comments relate to the conduct of the Planning Officers and the Development Management Committee as a whole.
- 1.2 In undertaking this investigation I have adopted a similar methodology to that of the Local Government Ombudsman, whereby I have sought to establish whether there has been maladministration in this case, sufficient to suggest that the decision taken on the planning application was misdirected by either taking into account matters it should not have done or having failed to take into account matters that it should have.
- 1.3 I have also examined any potential areas of less than best practice that have been raised by the complainants and where appropriate have made recommendations for improvements which I hope will be of benefit in the decision making process in the future.
- 1.4 I fully understand the complainant's strong feelings about this application and their perception of its potential impact on both their village and their lives. The quality of the objections on the planning file is generally very high and there has been, in the main, a clear intention to focus on the material planning matters relevant to the case. I must however explain that planning applications are judged on their merits and a Planning Authority must take that judgement on the proposal submitted and not in relation to a preferred alternative – for example, a different site. The analysis that the Planning Authority undertakes must be based on evidence and facts and not subjective views, nor on the volume of objections or strength of feeling locally. In my investigation therefore, I have not dealt with personal comments, for example about the behaviour of either the applicants or the supporters of the proposal, nor have I considered the value of assumptions about the future of this poultry unit.
- 1.5 The specific issues I have identified for investigation are as follows:
1. The handling of the planning application by the Planning Officers.
 2. The reaction of the Members of the Development Management Committee to the presentations made by both objectors and supporters.
 3. The conduct of the Development Management Committee in reaching a decision.

2.0 The Handling of the Planning Application by Planning Officers

2.1 The specific points raised under this heading were:

- ❖ An Environmental Impact Assessment should have been required with the planning application.
- ❖ EDDC could be at risk of knowingly permitting pollution by the development being unable to meet the relevant legislative and regulatory requirements.
- ❖ Planning application changed after submission without re-consultation of the Parish Council.
- ❖ Planning application riddled with inaccuracies.
- ❖ Planning Officers influenced by Ward Member's views.
- ❖ No notice taken of Blackdown Hills AONB Partnership's objection.

2.2 *Environmental Impact Assessment (EIA)*: The requirements of the EIA Directive were introduced into UK Legislation in 1981 and following a number of court challenges about the interpretation of the Directive the former Office of the Deputy Prime Minister issued a guidance note to all Chief Planning Officers in 2004, which I have used for reference in my analysis on this issue.

2.3 Certain categories of development necessitate an EIA either because they are defined in Schedule 1 of the Regulations in which case the requirement is mandatory, or in Schedule 2 of the Regulations, where the need is discretionary, dependent on the development's anticipated environmental effects. For poultry units Schedule 1 refers to 85,000 places for broilers or 60,000 places for hens. In this case only approximately 10,000 hens are proposed on site. In Schedule 2 the area of new floor space for intensive livestock units must exceed 500 square metres. This case falls below this threshold, if only just.

2.4 The Office of the Deputy Prime Minister's guidance note points out that projects that fall below the thresholds and criteria in Schedule 2 do not generally require an EIA and that the Planning Authority need not adopt a screening opinion. In effect the Regulations have already provided a negative Screening Opinion. However the Council did undertake a formal Screening Opinion (to advise on the need for an EIA) and confirmed that it was not required.

2.5 The anticipation of more units cannot be taken into account in a Screening Opinion. When and if more poultry houses are sought in the future however, as the thresholds are cumulative, an EIA may then be required.

2.6 The need for an EIA is therefore not dependent on anticipated effect alone, but on the category of size and scale of development and then its anticipated effect. The decision made by the Screening Opinion was therefore correct in my view.

2.7 *Knowingly permitting pollution*: The Town and Country Planning Legislation deals with land use only and does not have jurisdiction over pollution matters dealt with by Defra, the Environment Agency and others. That is dealt with by reference to other legislation. All necessary consents must be obtained before development can commence. The Planning Authority has dealt with the issue of waste however by the relevant condition. Thus the Planning Authority has dealt with the issues it does have jurisdiction over and not sought to impose conditions relating to matters arbitrated by other bodies. There is information known as an 'informative' for the applicant on the decision notice about the need to obtain all the listed consents. This is the correct approach.

- 2.8 *The application changed after submission:* It is assumed that this refers to the removal from the application of the proposal for the retention of a mobile home on the site. As the application now included less development than previously, it would be unnecessary in my opinion to re-consult to seek views on this. If the amendment had proposed additional development then of course re-consultation would have been appropriate.
- 2.9 *Application riddled with inaccuracies:* It is acknowledged in the Committee Report that in answering in the negative on the question about water courses, the applicant was ignoring a small water course or ditch on the site. The question of flooding and the disposal of new surface water run off was however dealt with in the report, so the original error has not meant that the relevant issues were not analysed.
- 2.10 The failure to serve notice on the owner of the common land/right of way included in the red lined application site is potentially a technical error. The question then to be addressed is whether or not the applicant did this knowingly and with intent to mislead the Planning Authority. There is no evidence of this and the only area of apparently common land included in the red line is the existing access to the highway. No new works were proposed here. It may also be the case that the applicant owns this strip of common land – as indicated on the application plan (it is shown as land in the ownership or control of the applicant). All common land is owned, but it is land over which specified individuals have a right of access.
- 2.11 *Planning Officers influenced by Ward Member:* It is appropriate that Ward Members get involved in controversial planning applications by speaking to both local residents and Planning Officers. The Planning Officer's recommendation will however be an independent judgement, informed by all the available evidence, consultee responses and factual points raised by those affected by the proposed development. In this case the Ward Member spoke both to the Senior Planning Officer who dealt with the case and myself to highlight the issues as he identified them and to ask for the application to be sent for discussion by the Development Management Committee. There is nothing unreasonable in my view in this approach.
- 2.12 *The Blackdown Hills Area of Outstanding Natural Beauty (AONB) Partnership:* This site does not lie within an AONB but is adjacent to the Blackdown Hills AONB and the Partnership sent in comments objecting to the proposed two poultry units. The decision is however made by the Planning Authority which weighed this objection (amongst others) with all the other factors and reached a decision. The Committee Report records the objection from the Partnership, refers to the relevant policy in the adopted Local Plan and assesses the impact on the landscape. I can find no fault therefore with the process albeit that the conclusions are not what the complainants would have hoped for.

3.0 Presentations at Development Management Committee

3.1 The specific points made under this heading were:

- ❖ Poor facilities at Exmouth Town Hall for presentations.
- ❖ Speakers treated badly by the Committee – derisory laughter.
- ❖ The remarks made by the supporters bordered on racism i.e. the length of time living in the area.
- ❖ Agent for the applicant was allowed to make derogatory remarks about the objectors, raised non-planning matters and should have been called to order.
- ❖ Comments of supporters should have been disregarded as non-planning matters.

- ❖ Atmosphere in the room was one of derision and intolerance – speakers lectured on farming.
 - ❖ Murmurs of assent and support from Councillors during supporter's presentations and demure cheers when Councillor Skinner spoke.
 - ❖ Councillors not listening to or having eye contact with objectors during presentations but listening actively to the supporters and agent's case.
 - ❖ Planning Officers giggling during objector's presentations.
 - ❖ One of the applicant's friends was fiddling with a mobile phone and had to be stopped.
- 3.2 I have spoken to a number of people present at the Committee but who are not directly cited by the complainants, about the conduct of Councillors during the presentations. It is clear that there was a lack of attention being paid to the objectors with some Councillors actually laughing and chatting between themselves during the presentations. The Exmouth Town Hall Chamber is not an ideal location for speakers, with less than ideal acoustics. However the lack of respect shown to the objectors whilst they spoke cannot be regarded as satisfactory.
- 3.3 The evidence of a difference of attitude to the supporters and the applicant's agent during their presentation is less clear cut, but it is not inconceivable that where Councillors agreed with points being made they displayed attitudes of support or agreement.
- 3.4 Any remarks made by Councillors or speakers which are inappropriate in any way should be stopped by the Chairman and disregarded by the Committee Members. In this case the questioning of speakers was inappropriate (this has been dealt with elsewhere in relation to individual Councillors) and the same inappropriate question was put more than once. The points made by the supporters and the agent regarding length of residence or the background etc of objectors was irrelevant to the determination of the planning application.
- 3.5 My research has not confirmed any inappropriate behaviour by any officers present at the meeting. The planning officer present was the Development Manager, Steve Belli, who has no memory of giggling during the meeting. I suggest therefore that it may have been a matter of his attention being diverted - I understand that he observed what he thought to be someone trying to record the meeting (something which is against the rules of the Exmouth Town Hall Chamber) and he drew this to the attention of his legal colleague.
- 3.6 It is important that speakers at the Committee are treated with respect regardless of whether their points are accepted or not in the subsequent debate or decision. The importance to the speakers of being listened to politely cannot be underestimated as they have a personal interest in the case and a right to put their views to the Committee. All speakers should be treated equally and as the Committee are effectively arbitrating the case a neutral attitude should be maintained until the debate commences.
- 3.7 In this case this does not appear to have occurred and the following recommendations are therefore made:
1. All speakers should be treated with respect and listened to in silence.
 2. All questions should be appropriate and related to planning matters.
 3. There should be no display of agreement with or dissent from, the points being made by speakers.
 4. The Chairman should put a stop to inappropriate points or questioning as soon as possible.

4.0 Reaching a Decision

4.1 The specific points made under this heading were:

- ❖ The decision was made too quickly, unlike a previous application for a garage which was given careful consideration.
- ❖ Committee had pre-judged the application – it was discriminatory and undemocratic.
- ❖ There was collusion and corruption practices evident.
- ❖ Committee refused to have a site visit as it said it didn't have the expertise to warrant the visit.
- ❖ Committee clearly rebelling against the lead from the new Chairman, especially over the site visit.
- ❖ The decision was seriously flawed and should be revoked.
- ❖ Felt something covert was going on at Committee.
- ❖ What happened to equal democratic rights as a fair and balanced hearing at the Committee?
- ❖ Decisions reached did not follow the proper legal and democratic process.
- ❖ Councillors had not read all the documentation or the 46 letters of objection, knew no details about the case and took no interest in it.

4.2 Development Management Committee can seem to be a fast moving and confusing experience if someone has not attended one before. The Members of the Committee will have read the comprehensive Committee reports prepared by the Planning Officers, in advance of the meeting so already understand all the relevant issues, in preparation for the debate. These reports include summaries of points of objection and support drawn from the letters received whilst applications are being processed.

4.3 Consequently it is inevitable that Members will already have drawn some conclusions from the written information, but good practice requires that they remain open-minded until they have heard all the speaker's points of view as required by the Code of Conduct.

4.4 The Committee Members are experienced – some of them have many years experience in determining planning applications. Equally over time trends emerge about the type of proposals they are sympathetic to. Rural agricultural businesses are important in this District to the local economy and in this time of financial hardship the weight given to such enterprises has increased in the balancing exercise that is the determining of planning applications. This is not an unreasonable position for the Committee to take and it reflects the emphasis of policy in the Local Plan and therefore there is nothing fundamentally wrong in the decision reached, or how it was reached. I can certainly find no evidence of collusion or corrupt practices.

4.5 Further, the decision was reached in the public domain with a published written agenda – available 10 days before the Committee met. The decision was taken by elected representatives of the East Devon community and as the Ward Member is not a voting Member of that Committee, by those who had no personal interest in the case. Whilst the decision may not have been what the complainants wished, it was reached via a democratic exercise with all who wished, able to make their views known either verbally or in the written form.

4.6 However, there is the question of the perception of the decision making process – how it appeared to those present, particularly those who had a personal interest in the decision. There was a definite feeling that the Committee had already made its decision before the

debate took place, both by the attitude towards the speakers by some Councillors and by the resistance to the Chairman's proposal for a site visit. It was not unreasonable to feel that a site visit was unnecessary as the Committee had sufficient information to make the decision but the way that judgement was portrayed did not come over well.

4.7 It is recommended therefore that the Committee adopts the following approach in making decisions on planning applications:

Out training?

1. When debating an application, focus on the precise points where there is agreement/disagreement with the Officer's report, drawing from other information, or points of view brought to your attention as appropriate.
2. Only refer to material planning considerations and heed advice from the Chairman if straying from this.
3. Ensure the points made are valid in planning law.
4. Base decisions made, even when differing from the Planning Officer's recommendation, on policy and the facts of the case.

MW reinforce?

5. Be clear that all the relevant matters have been considered before a decision is made – this can be achieved by the Chairman rounding up the debate before a vote is taken.
6. The Chairman to ensure that the proposed motion for a vote is clear to all present.
7. After the vote the Chairman to confirm the decision made.

Now agreed?

8. A Lead officer (usually a Director or one of the Council's lawyers) be nominated to assist the Chairman in all matters of process and protocol.

5.0 Conclusions

5.1 Overall there is no evidence that the decision made was reached without all the appropriate legal and democratic processes being properly undertaken. However, there is clear evidence that the Committee failed to portray itself, in this instance, as a formal quasi judicial decision making body which not only was, but was also seen to be, fair and equal to all participants and remained open minded until the debate commenced.

5.2 It is recommended therefore that, in addition to the detailed recommendations listed above, the Committee be conducted in a more formal manner than previously, in a way that ensures that all those present understand the decision making process, the reasons why some applications generate more debate than others and why a particular decision was reached. These reasons should be minuted.

check our with mark + Peter Dillon

ession for Members of the Committee on all the recommendations should be held possible.

Countryside Services

1. Ch'nan refer the item to officer
2. Any material updates from officer
3. Ch'nan hear question from members
4. Ch'nan asks officer to comment from or all members question.
5. Proposal debate
6. Ch'nan only calls officer in now; 69 planning officer needs

The Waves
16 Coastguard Road
Budleigh Salterton
Devon
EX9 8NU

13th September, 2009

For the attention of Mr. Christopher Holland Democratic Services Officer EDDC
Management Development Committee 25 August 2009 Item 4 Longboat 08/2537/FUL

Dear Mr. Holland

I write this letter to formally complain about what I believe to be the unacceptable conduct of Mr. Diavani and Mr. Belli at the above meeting and contrary to EDDC's Code of Practice.

I have been in business for over 38 years, I own and run my business which employs around 230 people.

We are proud to be "investors in people" and treat all of our staff, suppliers, customers and anyone connected with the business with the utmost respect, courtesy, politeness and honesty. Over the years I have attended thousands of meetings but in all that time I have never witnessed such a disgracefully biased event as this Longboat application.

Mr. Diavani was the Chairman of that meeting.

Mr. Belli represented EDDC as the Development Manager.

I did not write straight after the meeting as I was so incensed with the way the proceedings were so unprofessionally handled.

Mr. Diavani opened the meeting saying that you make think it is a done deal but it is not. After a very short time it became very obvious that it was a done deal as his attitude was so biased in favour of the application.

Mr. Belli then presented the case recommending approval – he then spoke about demolition and building dates even before the application was discussed.

Members of the public were then asked to speak for their allotted 3 minutes.

Courtney Richards the Mayor of Budleigh objected to the application on behalf of the Town Council and a huge majority of Budleigh residents.

Helen Tickle objected strongly on behalf of the OVA and their 1100 members.

David Daniel spoke about storm damage and sea level rises.

I spoke about the letters of objection (220), the amazing lack of support from RESIDENTS (31), what the Conservation Officer had said, the fact that it was sited in a residential area, the noise the business would create with staff leaving at up until 02.00 in the morning, the fact that the business would be in operation for 18 hours a day, etc etc.

A disabled lady who had lost her arm in an accident spoke about the shelter and viewing platform.

Whilst we were speaking Mr. Diavani and Mr. Belli continually whispered behind cupped hands, which I thought to be very immature. This was so rude and so out of order – this happened to all of us speaking against the application and definitely undermined our confidence and influenced the Committee members. I almost stopped to ask them if they were interested in what I was saying and if I was wasting my time – I should have done that as they were not really interested.

Mr. Bell said that the number of letters of objection were irrelevant, it was the content that mattered – this incensed those attending.

I also quoted what Mr. Guy, the Conversation Officer had said on many occasions, "I have always advocated that any replacement building sits under the cliffs so that its massing does not dominate views."

There was no comment from the chair on this matter – the new building WILL NOT sit under the cliffs and WILL dominate the views.

I was disappointed to see that Mr. Guy had left the meeting and that the chair in which he was sat was empty, as I would have liked to have challenged him on his last minute change of mind to UNCHANGED plans. I sat down, felt totally humiliated and thought it was just a waste of my valuable time and had been taken for a fool.

The tearful disabled lady pleaded to keep the shelter and viewing platform – a comment something of the order of, the shelter belongs to EDDC and we will do what we like with it came from Mr. Bell.

Mr. Daniel showed pictures of fairly recent storm damage and spoke about the real dangers of sea level rises that could affect the Longboat. After Mr. Daniel had sat down, Mr. Diavani replied he had a report saying it was not an imminent issue. What he failed to say was that the report was supplied by the APPLICANT not the Environment Agency. The Environment Agency said that Natural England should be consulted – Mr. Diavani said that Natural England had been consulted – what he failed to say was that Natural England OBJECTED to the application.

We were told that Budleigh was no different from Exmouth.

We were told it was just what Budleigh needed to bring it into the 21st century.

We were told it would be nice to have a cream tea after 4.10pm.

We were told that the building was in keeping.

The WHS Team report was mentioned but what Mr. Diavani failed to say was that Dr. Sam Rose said "the views to and from the World Heritage Site would be affected."

Dr. Rose also specifically pointed out that The WHS Management Policy 1.4 says: "1.4 Oppose development in the site's setting that may warrant a future need for coastal defence structures, particularly in the light of potential sea level rise and extreme events due to climate change"

One member of the committee suggested that this application was so sensitive that a site visit was needed – Mr. Diavani said it was not necessary.

Another Councillor asked for a deferment – again "no" was the answer from the chair.

The totally biased nature of the meeting just went on and on.

Messrs Diavani and Bell were desperate to push the approval through at "that" meeting. An amendment was proposed in that they were happy with the design, size and scale but that a few further negotiations were needed as regards to building materials, air extraction structures, the large glaring aluminium roof etc. This confusion side tracked some councillors until they realized they were being bamboozled into voting away further negotiation over the two critical aspects of size and scale. Some councillors expressed serious reservations but those issues were left unresolved.

Mrs. Little then appeared – her comments put even more pressure on the Committee when she basically said that EDDC did not want an appeal because of the huge cost involved – surely this is not a reason to approve?

Then came the vote which was a total fiasco.

Those against raised their hands, the count took place which was incorrect with members of the public shouting "no, wrong."

Even before the vote was corrected Mr. Diavani said those "for" – he was the first to raise his hand in favour.

Someone challenged him on this behaviour but he said that he was entitled to a normal committee vote and if necessary the deciding vote. This may be correct but the way it took place was beyond belief – the whole affair was stage managed.

Mr. Diavani continued with his light hearted quips – it was like pouring petrol on an already raging fire. I have never seen people so incandescent with rage. The behaviour of the public then became unacceptable as well, but by this time they were almost in a frenzy.

Mr. Diavani has recently written "I endeavour to carry out my role as Chairman honestly and to the best of my ability. The decision taken was as a result of careful consideration of all that was said at the meeting".

I will not comment on honesty or ability but what I will say is that there is NO WAY that careful consideration was given to the views of others.

He did not chair the meeting impartially as he was so blatantly biased in favour. He was determined to push through the development as proposed despite the unbelievable weight of opinion against it.

The way the meeting was conducted must surely be against EDDC's Code of Practice – it was totally one sided – IT WAS NOT A FAIR AND DEMOCRATIC MEETING.

His comments increased the anger of those present and he totally misjudged the situation.

Mr. Bell was basically doing his job but I do submit that he far overstepped his authority in that meeting.

He is not a committee member and does not have a vote – one could have thought that at times he was the Chairman.

He was sat next to Mr. Diavani pulling the strings – surely this is fundamentally wrong and undemocratic?

Mr. Holland, you are the Democratic Services Officer for EDDC – if EDDC is a democratic organisation then this meeting will be declared null and void, the application will be presented again to those who are democratic, professional and who do listen impartially to both sides of the story.

This year we have had MP's expenses, Lockerbie, Libyan oil and the Longboat – three of these are national issues and one is local. Whether national or local, what is obvious is that the public will no longer be treated as fools by those who are elected representatives.

Whilst this letter may not be word perfect, I do believe that what I have said is a fair and truthful assessment of the proceedings.

Please bring my comments to the attention of the Standards Committee.

Yours sincerely,

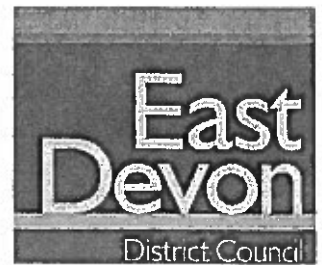


Ray Gallop

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||| mawic

Date: 25 September 2009
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Dear

**Development Management Committee 25 August 2009
Planning Application 08/2537/FUL – The Longboat Cafe, Budleigh Salterton**

Mark Williams the Chief Executive has passed me your letter in my role as Monitoring Officer for the Council to consider your complaint regarding the conduct of the Planning Management Committee held on 25 August in its dealings with the Longboat Cafe application in Budleigh Salterton. I note your emotional reaction to the decision made by the Committee and your belief that there is a systemic failure in the practice of the Committee and in particular in the role of the Chairman.

I have first considered whether the role of the Chairman at the meeting warrants consideration by the Standards Committee in connection with his conduct and I found insufficient evidence that there has been a breach of the Code of Conduct for Councillors. I turn therefore to consider the more general matter of the conduct of the Planning Management Committee in this particular case.

Turning to the question of the proceedings at the Development Management Committee itself I wish to preceed my comments on your points by saying that members of the Development Management Committee are supposed to judge planning applications on the evidence and policies before them and reach unbiased conclusions. Councillors may be pre-disposed to a particular view before attending a committee either for or against a planning application but they must have an open mind before they can vote at the Committee. Councillors are entitled to both hold and express their own views so long as they are prepared to reconsider their position in the light of all the evidence and arguments presented. They must not give the impression that their minds are closed. This advice is promoted by Standards Board for England and is also included in "Probity in Planning – The Role of Councillors and Officers" recently published by the Local Government Association.

It is also important to explain that the strength of feeling of the local community is not in itself a reason for a planning committee to reach a judgement supporting that view, no matter how many of the local residents express it, if this flies in the face of the facts of the case. In a democracy local people are entitled to make their views known. The definition of democracy however does not include an automatic presumption that there should be agreement with the community view. The

contd/.....

2.
25 September 2009
Letter to

Development Management Committee at East Devon allows the public to express their views direct to the Members of the Committee and for the Councillors to ask questions for clarification. By this means the Members have access to the local community's view. This of course is not their only access as the written comments received during the processing of the application are summarised in the committee report which the Members have before them and which is a published document available to the public 10 days before the Committee sits. This committee report is a comprehensive collection of all the views expressed in respect of a planning application and it contains an analysis by the planning officers culminating in a recommendation on the application.

The Members of the Committee having read this report and having heard the local view and often having been to site themselves to have a look and appreciate the context of the site then debate the issues as they see them before reaching a resolution on the application. I need to say at this point that I find no evidence that any of these elements were missing at this particular Committee. The agenda was available, the public did address the Committee, and there was a full debate on the case. Further, there was a motion to refuse the application which was put to the vote but failed. A subsequent motion to approve the proposal in principle, and in particular in relation to the bulk and design of the building was also voted on and passed. Whilst there are those who will disagree with that decision the opportunity to both refuse and approve the application was exercised by the Committee and it was the latter which was successful. Whilst this may not be acceptable to some residents of Budleigh Salterton, it is nevertheless an expression of the democratic process working correctly. I now turn to your specific points.

Undue Influence

On the question of the Chairman of the Committee pointing out to the Members of that Committee that there were strong feelings generated by the proposal and that there was discrepancy between the numbers of letters for and against the scheme but that Members should disregard this, it is in fact appropriate to explain this to the Committee. As I've set out above the volume of local opinion does not influence a planning application judgement. For it to do so could lead the Council into difficulties either at an appeal where an award of costs can be made if a Committee has been influenced to reach its decision of refusal based solely on local opinion and not on the facts of the case or should it have approved an application, or by a judicial review. Therefore whilst you may regard the comment as inflammatory I take the view that it was in fact a sensible statement to make.

You suggest that this was a one off comment but I am advised by the Head of Planning & Countryside Services that this is not the case. It has been used by Chairmen of the Committee on more than one occasion. In any case as you say given the experience of those Members on the Planning Management Committee, they will be aware of this in any case.

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25 September 2009
Letter to

I note what you say about the Chairman referring to his previous career. I am advised that at the meeting a number of the members of the public also referred to their backgrounds or current positions as justifying their views. It is true that one's position or background is irrelevant to the judgement to be made in the Committee but I have no evidence that in the end the expression of these influenced the Committee in any particular way. The heckling, however, was unacceptable behaviour whatever the Chairman may have said. Development Management Committee is not a public meeting in the sense that it is a debate between all those present. The Development Management Committee meeting is a committee meeting that may be attended by members of the public and respect should have been shown by those present to the Committee Members. It served no good purpose and certainly would never influence the decision of that Committee.

In answer to your next point, I think it is appropriate to bear in mind that a recommendation to refuse the application was proposed by Councillor Bloxham on the Committee and a vote was held on it. Whilst that recommendation failed, it is an expression of the balanced nature of the debate that both a refusal and an approval recommendation were first debated and then voted upon. In my view, this indicates that the matter was not hustled from start to finish into a resolution to grant approval. You refer in your next point to some Councillors losing focus during the dialogue and misunderstanding the implications of the second proposal (which was in fact the third). You rightly point out there was a motion to approve the application as it stood followed by a motion to refuse which failed and finally the resolution to approve the proposal in principle and defer the matters of detail. The only evidence I have that any Councillor did misunderstand the final motion was that Councillor Hall first seconded Councillor Franklin's proposal and then withdrew it following the receipt of a note from the Chairman of the Ottervale Association. This in itself is a separate matter that warrants investigation but on the point that you make it is the only evidence I have that Councillors were not aware of what they were voting for. The fact that the vote went 8-6 in favour of approval suggested that 6 Councillors knew very well that they wished to vote against that proposal. In the light of this I cannot find that the Chairman unduly influenced the final decision either by bamboozling the Committee Members or by omitting anything as you describe it.

Your next point suggests that a vote was retaken to give Members the opportunity to see what others were voting. I have to say that's seems somewhat contrived as a point. If Members believe in what they are voting for and 6 Members didn't wish to approve the application whilst 8 did, they would have followed their own opinion and not be influenced by the way a different Member of the Committee chose to vote.

Your next point relates to the point in time when the Chairman was challenged by a member of the audience saying that he couldn't vote. The Chairman quite rightly explained that he is perfectly entitled to vote on any motion proposed and indeed has two votes as he has the casting vote in any event that there is a tie in the voting.

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The introduction of a former Councillor by the Chairman with familiarity I do not think can have influenced the views of the Committee given the disparity of view that was evidenced by the different votes.

Many speakers raise non-planning matters when addressing the Committee. But it is not the practice of the Chairman of the Committee to interrupt them but to allow them to have their 3 minute say and knowing that the Committee is able to distinguish between planning and non-planning matters in reaching its judgements as all members of the Development Management Committee receive training on the matter.

A member of the public whose contribution was followed by the Chairman reading an extract from an Environment Agency letter has made a separate complaint which I have responded to direct to him. In this I explained that the document that the Chairman was reading from was a public document part of the background papers to the application and in the public domain. He was not expressing his own view simply that of the Environment Agency one of the statutory consultees on planning applications and the Agency did not object to the planning application. Whilst it may have been more appropriate to have read the letter out at the end of the presentations, it nevertheless was reasonable for him to draw this contrary view to the attention of the members making the judgement as the more information they had the better able they were to make that judgement.

It is certainly the case that the behaviour of those present at Committee to observe its working did not show respect by their noise and reactions. The Chairman and indeed the former Chairman of Development Management Committee have experienced this and whilst they attempt to keep it under control they cannot always prevent it from happening. To remove members of the public from the chamber is the final option and not a first action. The real abuse began once the Committee had made its decision and the members of the public were leaving the room. This was completely unacceptable behaviour.

Failure to Manage Process

I am sorry that you do not believe the Chairman chaired the meeting well and I note your comments on how you believe a Chairman should act. The Chairman has received training in chairing meetings, as have all the Chairmen of the Council. I would also add that, as with all matters of decision-making processes in the council, we keep them under review and offer appropriate support where it is needed. In this case, I find no errors of process and if there had been I am confident that the Council's lawyer who was present at the meeting would have corrected matters immediately.

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5.
25 September 2009
Letter to

The Committee can choose to visit a site if it wishes. It is however an expense for a full Planning Inspection Committee to visit the site before reaching a decision and members of the Development Management Committee are therefore asked to visit as many sites coming to Committee as they can in order to prevent the necessity for this exercise. Nevertheless, if they wish to vote for a site visit they may. In this case the Committee showed no inclination to follow the recommendation of Councillor Parr to have a site visit. The point of the planning inspection going to committee is for Members to familiarise themselves with the site. If they have already done so there is little point in the Planning Inspection Committee being instigated. In any case there is no guarantee that the decision will be different if the Planning Inspection Committee had occurred.

Lack of Professional Standards

Members of the Development Management Committee are members for the whole of East Devon and they make no remarks that would imply that one settlement is favoured over another. You suggest that the Committee held the Council's commercial priorities higher than the views of the town but I am advised that there was little or no debate on the question of the commercial priorities of the Council although it is true to say that one of the Council's objectives is a thriving economy. This may manifest itself in a number of ways but supporting local businesses would certainly be one of them.

However, equally the Council is committed to a green and clean environment and it is the balancing judgement that the Committee has to make as to which weight it gives to each particular element of those sometimes competing arguments. In this case the committee felt that replacing an existing commercial premises with a different one, albeit designed in a completely different way, was not inappropriate in principle but it was the design, scale and mass of the building that caused some Members to have grave concerns. However others felt differently and it was their opinion that carried the day.

Having looked at your comments in the round it is clear that you were very disappointed with the outcome and the fact that the Committee did not follow the views of the local community. Further you believe that the actions of the Committee Chairman compounded this view. However I find no evidence to support that view and whilst the Chairman may have given the impression that he was favouring one approach over another the Committee itself had the opportunity under his instigation to have a full and complete debate with motions both for and against the proposal being openly and thoroughly aired before a final decision was reached. I do not believe therefore that the Chairman of the Committee acted so inappropriately as to warrant any action being taken.

Yours sincerely

Denise Lyon
Deputy Chief Executive and Monitoring Officer

Date: 25 September 2009
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Dear

Planning Application 08/2537/FUL, Longboat Cafe, Budleigh Salterton

I am writing in reply to your letter of 4 September 2009 addressed to Mr Holland one of our Democratic Services Officers in which you express your complaint about the handling of the Longboat Cafe planning application at the Development Management Committee meeting on 25 August. You believe that the validity of the proceedings was questionable because of the conduct of the Chairman and the planning officers. In my role as Monitoring Officer for the Council I have considered your complaint and discussed the matter with the Head of Planning & Countryside Service Kate Little who was, as you are aware, in attendance at the meeting that day during the discussion of this application.

In considering your complaint I have taken your issue regarding the validity of the proceedings to refer to the legal process that the Committee went through to reach a decision on the planning application. I have also considered whether the conduct of the Chairman was a matter for the Standards Committee. With regard to the latter I found no grounds for referring Councillor Diviani's conduct to the Standards Committee as there is insufficient evidence of a breach of the Council's Code of Conduct for Councillors.

Turning to the question of the proceedings at the Development Management Committee itself, I wish to preceed my comments on your points by saying that members of the Development Management Committee are supposed to judge planning applications on the evidence and policies before them and reach unbiased conclusions. Councillors may be pre-disposed to a particular view before attending a committee either for or against a planning application but they must have an open mind before they can vote at the Committee. Councillors are entitled to both hold and express their own views so long as they are prepared to reconsider their position in the light of all the evidence and arguments presented. They must not give the impression that their minds are closed. This advice is promoted by Standards Board for England and is also included in "Probity in Planning – The Role of Councillors and Officers" recently published by the Local Government Association.

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It is also important to explain that the strength of feeling of the local community is not in itself a reason for a planning committee to reach a judgement supporting that view, no matter how many of the local residents express it, if this flies in the face of the facts of the case. In a democracy local people are entitled to make their views known. The definition of democracy however does not include an automatic presumption that there should be agreement with the community view. The Development Management Committee at East Devon allows the public to express their views direct to the Members of the Committee and for the Councillors to ask questions for clarification. By this means, the Members have access to the local community's view. This of course is not their only access as the written comments received during the processing of the application are summarised in the committee report which the Members have before them and which is a published document available to the public 10 days before the Committee sits. This committee report is a comprehensive collection of all the views expressed in respect of a planning application and it contains an analysis by the planning officers culminating in a recommendation on the application.

The Members of the Committee having read this report, having heard the local view and often having been to site themselves to have a look and appreciate the context of the site then debate the issues as they see them before reaching a resolution on the application. I need to say at this point that I find no evidence that any of these elements were missing at this particular Committee. The agenda was available, the public did address the Committee, and there was a full debate on the case. Further, there was a motion to refuse the application which was put to the vote but failed. A subsequent motion to approve the proposal in principle, and in particular in relation to the bulk and design of the building was also voted on and passed. Whilst there are those who will disagree with that decision, the opportunity to both refuse and approve the application was exercised by the Committee and it was the latter which was successful. Whilst this may not be acceptable to some residents of Budleigh Salterton, it is nevertheless an expression of the democratic process working correctly. I will turn now to your specific points:

1. In the light of what I have described above it was not unreasonable for the Chairman of the Committee to ask the Members not to be swayed by the strength of local feeling in reaching a judgment. Whilst you believe that this gave an unfortunate impression that the views of local residents and taxpayers was of no interest, those views were widely aired in the meeting and the Members of the Committee were at liberty to either agree or disagree with them as they felt appropriate, but they had to base their decision on the facts of the case.
2. Similarly with the contribution made by the Mayor of Budleigh Salterton, who is obviously an important local resident. The fact that he had the opportunity to speak on behalf of the community and express their views does not require the Committee to follow his thinking.

contd/.....

3. A member of the public whose contribution was followed by the Chairman reading an extract from an Environment Agency letter has made a separate complaint which I have responded to direct to him. In this I explained that the document that the Chairman was reading from was a public document part of the background papers to the application and in the public domain. He was not expressing his own view, simply that of the Environment Agency one of the statutory consultees on planning applications. The Agency did not object to the planning application. Whilst it may have been more appropriate to have read the letter out at the end of the presentations it nevertheless was reasonable for him to draw this contrary view to the attention of the members making the judgement as the more information they have the better able they are to make that judgement.
4. Everybody who speaks from the floor may say who they are if they wish. The Chairman of the Ottervale Association pointed out her status and it is not unreasonable for a former Councillor to mention his. The availability of cream teas in Budleigh Salterton as you rightly point out isn't a planning matter but much of what members of the public say to the Committee is often of that type and in order to allow the flow and not continually interrupt speakers, it is the Chairman's normal practice to simply allow the speakers to say what they wish for their 3 minutes.
5. The Committee can choose to visit a site if it wishes. It is however an expense for a full Planning Inspection Committee to visit the site before reaching a decision and members of the Development Management Committee are therefore asked to visit as many sites coming to Committee as they can in order to prevent the necessity for this exercise. Nevertheless, if they wish to vote for a site visit they may. In this case the Committee showed no inclination to follow the recommendation of Councillor Parr to have a site visit. The point of the planning Inspection Committee is for Members to familiarise themselves with the site, if they have not already done so. There is little point in the Planning Inspection Committee being instigated if Members have already seen the site. In any case there is no guarantee that the decision would be different if the Planning Inspection Committee had occurred.
6. This has been answered above.
7. I agree that the disappointing behaviour by some members of the Budleigh Salterton community in attendance at the Committee is to be regretted. Kate Little advises me that the Chairman did attempt to keep interruptions to a minimum but the persistence of those residents was difficult to control, to the extent that one resident made some particularly unfortunate remarks regarding the health of one of the Councillors for Budleigh Salterton. This is completely unacceptable.
8. On the question of sustainability, in fact the resolution passed by the Committee requires that the potential sustainability credentials of the building are investigated and increased sustainability levels secured.

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9. Kate Little advises me that she did not say that there were no planning grounds for the rejection of the planning application on the question of design. Rather she was very careful to explain that design is a subjective subject and the most difficult to defend in a planning appeal. Planning Officers do not debate with Councillors at the meeting and therefore once Mrs Little had made her point regarding the issue of using design as a ground for refusal she would not have responded to Councillor Hall's statement unless the Chairman required it. On the question of dealing with the replacement shelter as the Council is the landowner the shelter is being dealt with by the Council's Estates Team. It was not necessary therefore to deal with it under the planning regime.
10. I believe that this point is one of perception rather than an issue regarding the legal proceedings of the Committee.
11. I am sorry that you are not clear about the nature of the final resolution of the Committee due to the behaviour of certain residents of Budleigh Salterton at the meeting as discussed above. The minutes of the meeting are available on the Council's website should you wish to see them. As the recommendation to approve followed one to refuse the application I am not sure that I could substantiate the term 'bulldozed' as describing how the resolution to approve the scale and mass of the building was reached. It is true that several of the Councillors did not agree with the recommendation and they exercised their right to vote against it. However decisions at Development Management Committee are dealt with on a majority basis and an 8-6 vote is a perfectly acceptable outcome.
12. Members of the Planning Committee are members for the whole of East Devon and whilst they do acknowledge the quality of the setting of Budleigh Salterton this is not likely to be expressed by them to the detriment of other settlements in the District. Whilst local people might regard Councillor Diviani's comments that Budleigh is one of a number of seaside settlements in East Devon and thus not unique in that sense as ill considered and provocative I do not believe that this was the impression the Chairman's remarks made upon the Members of the Planning Committee for the reason I've just explained.
13. All the Members of the Planning Committee had the full and comprehensive report prepared by the Planning Officers available to them and whilst this contained reference to the objection from Natural England it also explained all the consultees responses along with an analysis of the facts and policies. It is this balanced exercise that must inform the judgement. It would be inappropriate to reach a decision based simply on the view of one statutory consultee without reference to the views of others.

contd/.....

5.
25 September 2009
Letter to

In conclusion therefore, whilst I understand your disillusionment with the proceedings of the Development Management Committee I think this is based more on the fact that the decision did not go the way you may have wished rather than on any factual errors or matters of procedure not being followed correctly. One of the Council's lawyers is always in attendance at the Committee along with the Democratic Services Officer both of whom are available to advise on council protocol. I find therefore that the Development Management Committee and the Chairman together with the actions of the Planning Officers present to have been appropriate.

Yours sincerely

Denise Lyon
Deputy Chief Executive and Monitoring Officer

COPY

Agenda Item 10

Standards Committee

3 November 2009

RP



The Standards Committee (Further Provisions) Regulations 2009

Summary

1. New Regulations relating to the work of Standards Committees came into force on 15 June 2009.
2. There are three initiatives, namely a power for Standards for England (SFE) (formerly the Standards Board for England) to suspend arrangements for the local assessment of complaints, a power for local authorities to establish Joint Standards Committees and a power for Standards Committees to grant dispensations to members to participate in meetings where they have a prejudicial interest.

Recommendation

- 1 that the name change from Standards Board for England to Standards for England be noted together with the new power to suspend local assessment;
- 2 that the Head of Legal, Licensing and Democratic Services and Chairman of the Standards Committee further explores the cost/benefit of setting up a Joint Standards Committee with Mid Devon District Council taking into account the Committee's expressed preference for Model A or Model B.
- 3 that the new guidance for dispensations be adopted with authority for the Head of Legal, Licensing and Democratic Services to make the appropriate amendments to the Constitution, including dispensations being delegated to the Standards Assessment and Hearings Sub Committee, with the Standards Committee retaining concurrent powers.

a) Reasons for Recommendation

The Council is required to adopt statutory change and is well advised to follow Standards for England guidance.

The establishment of a Joint Standards Committee has potential resource savings by avoiding duplication of work and committees in two separate authorities and may assist with the efficient running of the Committee. For example, local assessment should take place within 20 working days of receipt of a complaint. If a Joint Standards Committee meets monthly to deal with complaints against councillors and parish councillors in two authorities the number of meetings overall should be reduced.

b) Alternative Options

Not applicable.

c) Risk Considerations

Failure to act in accordance with Standards for England guidance could result in the Council's right to conduct local assessment being suspended.

d) Policy and Budgetary Considerations

See above under reasons for recommendation.

e) Date for Review of Decision

October 2010.

1 Main Body of the Report

1. The power to suspend local assessment.

(1) Standards for England may suspend local assessment in the following circumstances:

- a The Standards Committee has failed to have regard to guidance issued by SFE;
- b The Standards Committee has failed to comply with a direction from SFE;
- c The Standards Committee or the Monitoring Officer has failed to carry out functions in a reasonable time or manner;
- d Where it has been invited to do so by the Local Authority or its Standards Committee.

(2) Before suspending the functions of a Standards Committee, SFE must serve notice on the Committee and the Monitoring Officer, setting out its reasons for and the date of the proposed suspension, and allowing 28 days for the local authority to submit observations.

(3) A direction from SFE must be in writing served on the authority with a copy to the Chair of the Committee and the Monitoring Officer and must contain the following:-

- The date on which it is to take effect
- The reason for its issue
- The identity of any body of which will deal with an initial assessment in place of the Standards Committee
- A requirement for the authority to publish a copy of the direction in a local newspaper and on its website.

(4) The SFE may revoke a direction when it is satisfied that the circumstances which led to its issue no longer apply.

2. Joint Standards Committees

Members will recall that in her report dated 18 March 2008 the Head of Legal, Licensing and Democratic Services introduced the topic of Joint Standards Committees for which further guidance was awaited from SFE.

There has been some discussion with Mid Devon District Council who have expressed an interest in setting up a joint committee with this Council.

The guidance has now been received together with model terms of reference.

A copy of the guidance is attached to this report but it may be summarised as follows:-

There are two potential models:

Model A

A Joint Standards Committee to receive written allegations and requests for a review and to decide what action to take in relation to them. Each authority continues to deal independently with all other functions.

Model B

An extension of model A whereby the joint committee also considers final investigation reports, conducts hearings and makes findings and imposes sanctions.

The potential advantages of joint working are said to be the use of shared resources plus a reduction in the likelihood of a Member of the Committee being unable sit because of a conflict of interest.

The disadvantage is the potential loss of the benefit of local knowledge.

Membership of a Joint Committee must include at least one Member from each participating authority but must not include more than one Member of the Executive

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.

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. Dispensations

- 1 The members' Code of Conduct adopted by this authority requires members to withdraw from meetings when any matter in which they have a prejudicial interest is being discussed. However, before leaving, a Member may make representations, answer questions or give evidence if the public is allowed to do so at that meeting. However, they are not required to withdraw if they have obtained a dispensation from the Standards Committee. The new regulations set out revised circumstances in

which Standards Committees may grant dispensations to a Member. These are:

- The transaction of business of the authority would be impeded either because 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 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.
2. 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.
 3. 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. It is recommended that the to the Assessment and Hearings Sub Committee is appointed by the Standards Committee for the purpose of discharging the dispensation function, with the Standards Committee retaining the power concurrently. [This is permitted under section 54A of the Local Government Act 2000]. This would enable a dispensation request to go to the next appropriate committee or sub committee.

Legal Implications

Included within the report

Financial Implications

Regarding the proposal to explore setting any Joint Standards Committee, consideration needs to be given to additional costs of travelling, producing agendas and officer time.

Background Papers

- Consultations on Orders and Regulations relating to the Conduct of Local Authority Members in England.

Rachel Pocock

Standards Committee 3 November 2009

Head of Legal, Licensing and Democratic Services

Ext.2601

JOINT STANDARDS COMMITTEES GUIDANCE

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This guidance on the establishment of joint standards committees reflects the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations). The regulations which enable authorities to establish joint standards committees are not mandatory.

The guidance is aimed primarily at members of standards committees and monitoring officers but will also provide a useful reference tool for all members and officers.

It applies to:

- district, unitary, metropolitan, county and London borough councils
- English police authorities
- fire and rescue authorities (including fire and civil defence authorities)
- the London Fire and Emergency Planning Authority
- integrated transport authorities
- the Broads Authority
- national park authorities
- the Greater London Authority
- the Common Council of the City of London
- the Council of the Isles of Scilly

Members of parish and town councils may also find this guide useful.

The Local Government Act 2000 says that your authority must set up a standards committee. The Standards Committee (England) Regulations 2008 set out the rules governing the size and composition of a standards committee and should be read alongside this guidance.

Throughout this guidance we use the term

'independent member' to describe members appointed by the authority under Section 53(4)(b) of the Local Government Act 2000, and Regulation 5 of the Standards Committee (England) Regulations 2008.

You may also like to consult our *The role and make-up of standards committees* and *The local assessment of complaints* guidance.

Why might a joint standards committee be a good idea?

The regulations enable joint standards committees to carry out any of the functions of a standards committee granted to them by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989.

Joint arrangements are likely to be most useful where additional flexibility to deal with cases is needed, or where resources are limited and sharing them would benefit the successful management of the standards framework in that area.

Note: Police authorities cannot join with each other to create joint standards committees because Section 107(2) of the Local Government Act 1972 prevents them from having any of their functions carried out by other police authorities. However, they can join with other types of local authority to do so.

Potential benefits of forming a joint standards committee

We have identified a number of potential benefits of forming a joint standards committee. In addition, they may have some bearing on the type of joint working structure adopted. These are:

2 JOINT STANDARDS COMMITTEES GUIDANCE

- avoidance of conflicts of interest through a wider pool of members
- consistency of procedures
- public confidence in the complaints process enhanced through a greater 'distance' between standards committees and complainants/subject members
- greater capacity to meet the increased role and workload of standards committees under the local standards framework
- efficient and effective use of resources through sharing of resources and pooling expertise
- increased ability to promote high ethical standards through a raised profile of the standards committee
- the ability to jointly commission and fund mediation, training and investigations
- the opportunity to create stronger support and advisory functions

Note: These are just some of the potential benefits and we acknowledge that some authorities may have their own reasons for forming a joint standards committee that are specific to their own circumstances and requirements.

Potential problems/issues

We have also identified a number of potential problems or issues with joint arrangements, which we think are important to consider in conjunction with the benefits listed above:

- the possibility that it could become an overly bureaucratic and more complex process, leading to a lack of clarity for the general public

- member resistance to joint standards committees
- differing resource implications for authorities within the same joint working arrangement
- loss of local ownership of standards and ethical issues

The standards framework became fully localised on 8 May 2008. This reflected a general desire – which was supported by the Standards Board – among those in the field to be able to manage their own complaints. The local standards framework also recognised that a knowledge of the local area and local situation can have a positive impact on finding the right solutions.

Model Structures

We understand that authorities will each have different reasons for wanting or needing a joint standards committee. As a result, we have identified three model structures for joint standards committees which we think offer the most practical ways of operating joint arrangements.

The model structures are:

Model A

A joint standards committee to receive written allegations and requests for a review, and to decide what action to take in relation to them.

The defining feature of this model is that authorities will be able to retain their own standards committee. Furthermore, aside from receiving and assessing allegations and reviews, the authority's own standards committee will perform all other functions independently.

An advantage of this model structure is that it will help reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process. The regulations state that standards committee members who have been involved in decision making on the initial assessment of a complaint must not take part in the review of that decision. Forming a joint standards committee will increase the number of standards committee members, and so reduce the chance of conflicts of interests occurring.

This model also allows standards committees to share resources when assessing allegations, yet at the same time allows them to retain ownership of all other functions, including the hearing and determination processes. This will ensure that individual standards committees are applying sanctions based on their own local knowledge and are taking responsibility for implementing standards in their own local authorities.

Model B

A joint standards committee to carry out the functions in Model A along with receiving and considering final investigation reports and conducting hearings, making findings and imposing sanctions.

This model is an extension of Model A and will therefore also help to reduce the likelihood of standards committee members being conflicted out of a stage of the complaints process for the same reason. In addition, Model B offers an increased opportunity to reduce costs through holding joint hearings.

However, when considering whether to

adopt such a structure, authorities should bear in mind that the ability to draw on local knowledge when applying sanctions may be diminished. This potential lack of local knowledge becomes more important at this stage, given that much more information is available to the standards committee once an investigation has been conducted.

Model C

A joint standards committee to carry out all of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 and Part 1 of the Local Government and Housing Act 1989.

Model C is most appropriate for single purpose authorities such as police or fire authorities. These authorities usually have less contact with the public than local authorities and are the source of fewer complaints, so they tend to need to meet less frequently to exercise their specific complaint-handling functions. A joint working arrangement could therefore be a more sensible use of resources.

Establishing a joint standards committee in such situations should not lead to a weakening of the local standards framework in individual authorities. The same high levels of input expected of a single standards committee should also be applied to ensure that a culture of high standards is still developed within each participating authority.

We do not generally recommend that local authorities adopt Model C because it remains an important role of an authority's standards committee to promote and maintain high standards within its own authority.

The general rule is that a joint standards committee is composed in the same way as an ordinary standards committee but with the changes necessary to reflect the fact that it is a joint committee.

It must include at least one elected member of each authority involved in the joint arrangement.

At least 25% of the members of the joint standards committee must be independent members.

At least three people must attend any joint standards committee meeting.

The chair of the joint standards committee must always be an independent member. Therefore, you may also want to appoint an independent member to act as vice chair of the committee in case the chair is unable to attend.

If any of your authorities has executive arrangements, you are permitted to have one executive member on the joint standards committee. The authorities involved in the joint arrangement will decide which authority that member comes from. However, the executive member must not be the elected mayor or leader.

If your joint standards committee is responsible for any parish or town councils, at least two representatives from those parish or town councils covered by the authorities involved in the joint arrangement must be appointed to your standards committee. They cannot also be members of any of the authorities involved in the joint arrangement.

A parish or town council representative must be present on the standards committee at all times when parish matters are being discussed.

There is no limit to the number of independent members you can have on your joint standards committee

You will need to decide how to select independent members and how long an independent member should sit on the joint standards committee for. These arrangements will need to be set out in the terms of reference of the joint standards committee.

We recommend that you set a fixed period of four years. This will be long enough for them to gain an understanding of the committee, the authority and its workings, but not so long that they could be perceived as losing their independence.

When reappointing an independent member, you should bear in mind that we recommend that independent members should serve no longer than two terms, which is a maximum of eight years. It may be helpful for independent members to be appointed for differing lengths of time so that the experience they gain is not all lost simultaneously. The usual rules apply about advertising and appointing if you wish to reappoint an independent member.

Choosing an independent member

The arrangements for appointing independent members under a joint arrangement will be decided by the authorities involved in that arrangement and will be set out in its terms of reference.

Authorities have two choices. Each authority can appoint its own independent members or the authorities involved in the joint arrangement can appoint independent members jointly.

Where each authority appoints its own independent members, the requirements of paragraph 5(1) of the Standards Committee (England) Regulations 2008 apply. This means:

- the vacancy must be advertised in a local newspaper and such other publications as the authority deems appropriate
- the person must have submitted an application to the authority
- the person's appointment must be approved by the majority of the members of the authority

If an authority's standards committee has any independent members, it can appoint them to be independent members of a joint standards committee. The Standards Board believes that the regulations do not require the authority to comply with the requirements of paragraph 5(1) again for its existing independent members in order to appoint them to a joint standards committee.

An authority may not have any independent members to appoint to the joint standards committee if it is setting up a committee as set out in Model C (see page 4) and therefore is not also operating its own standards committee.

Where the authorities appoint jointly:

- the appointment must be approved by each authority
- the vacancy must be advertised in a

newspaper local to each authority area and in such other publications as each authority deems appropriate

- the person must have submitted a joint application, sent to the lead authority

Where more than a couple of authorities are involved in a joint arrangement it is likely that it will take some time for the authorities to each approve the appointment of the independent members.

Similarly coordinating the advertisement for the vacancy or vacancies in more than one local newspaper may take time. Formal and evidenced arrangements would need to be made for one authority to act on behalf of all the others involved in the joint arrangement. This is in order to accept application forms from candidates – otherwise any applicant would need to submit a separate form to each authority. This application, managed by the lead authority, would need to make it clear that it is to all of the authorities involved in the joint arrangement, and those authorities should be named on the form. The lead authority should then send a copy of the application to the other authorities.

Given the practical difficulties of joint appointments, we recommend that each authority arrange to appoint its own independent members. We also recommend this because there is some uncertainty in the legislation over the process for independent members appointed jointly on whether they should sign an undertaking to be bound by a code of conduct.

Whatever arrangements are used, the following factors need to be taken into account:

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1) A person can only be an independent member if that person:

- has not been a member or employee of any of the authorities involved in the joint arrangement within the five years before the date of appointment
- is not a member or officer of any relevant authority
- is not a relative or close friend of a member or employee of any of the authorities involved in the joint arrangement

2) The regulations say that a 'relative' means:

- a partner (a spouse, civil partner or someone a person lives with in a similar capacity)
- a parent
- a parent of a partner
- a son or daughter
- a stepson or stepdaughter
- the child of a partner
- a brother or sister
- a brother or sister of a partner
- a grandparent
- a grandchild
- an uncle or aunt
- a nephew or niece
- the partners of any of the people mentioned above

The regulations do not provide a specific definition of a close friend. Please refer to our publication the *Case Review 2007*, which includes a section on defining a close associate. This might be helpful in identifying a close friend. The *Case Review 2007* is available on our website.

Ceasing to be an independent member

Under the regulations, either of the following will no longer be able to be an independent member of the joint standards committee:

- any person appointed as an independent member who becomes a member or officer of an authority
- any person appointed as an independent member who becomes a relative of a member or officer of any of the authorities involved in the joint arrangement

Remuneration for members of a joint standards committee

Authorities in a joint arrangement will need to ensure that their joint arrangement specifies what provisions, if any, are to be made for the payment of allowances to members of the joint standards committee.

Indemnities for independent members

Where independent members are carrying out their statutory duties, they may be protected by their authority's indemnity arrangements under the Local Authorities (Indemnities for Member and Officers) Order 2004. We recommend that any joint arrangement includes consideration of what indemnity arrangements should be in place for independent members.

Complying with the Code of Conduct and the register of members' interests

Members of a joint standards committee must sign an undertaking to comply with the Code of Conduct of the authority that appointed them to that committee. They must also disclose their interests in the register of members' interests maintained by the monitoring officer of the authority that appointed them. Independent members must do so in the same way as other members.

Town and parish representatives

If your joint standards committee is responsible for parish or town councils we recommend you have a minimum of three parish or town council representatives on your standards committee, though the legal minimum is two.

Three parish or town council representatives will provide you with flexibility. It should allow the local assessment of complaints to be carried out if a parish or town council representative is unavailable or conflicted out.

Your council must consult parish and town councils within the area covered by the joint arrangement to help decide if there should be a parish sub-committee to deal with some of the joint standards committee's functions about parish and town councils.

Any parish sub-committee must include at least one parish or town council representative and at least one independent member. In addition, you must consult parish and town councils

within the area covered by the joint arrangement to determine how many parish and town council representatives are needed and how long they should serve on the sub-committee.

Choosing parish and town council representatives

The authorities involved in the joint arrangement must decide how to recruit and appoint parish or town council representatives. Your parish and town council representatives should have the trust of town and parish councils in the area covered by the joint arrangement, so you should involve them in the selection procedure.

Executive members on the joint standards committee

If the authorities are operating executive arrangements, the standards committee does not need to include any executive members. However, you should consider whether it is appropriate to appoint an executive member and, if so, how that member is to be chosen from among the authorities in the joint arrangement. There can only be one executive member on a joint standards committee, regardless of how many authorities are involved in the joint arrangement.

Appointing an executive member might show that the committee is supported and respected by all parts of the authorities. Not having an executive member could reflect a degree of independence from the political leadership of the authorities. This is ultimately a decision for the authority.

Elected members on the joint standards committee

A joint standards committee does not need to reflect the political balance of the authorities involved in the arrangement. This is because the joint standards committee should be independent of party politics. Its members need to have the respect of all the members of the authorities. It may be helpful to remind elected members of this when committee appointments are being made.

In the same way that independent members need to be appointed by a majority of the authority, it would be useful for your joint committee to include members who are supported by all political parties. This is particularly when the local assessment of complaints is carried out. This is so that greater trust and confidence can be established in the decision-making process among all political members.

Standards committees should be seen as making judgments impartially and without regard to party loyalty. Elected members should consequently be mindful of this when serving on a standards committee and should not be told how to vote on matters. Members should also remember that they must adhere to the Code of Conduct when serving on a standards committee.

Note: Where police authorities are included in joint arrangements, any reference above to an elected member needs to be read as a reference to an authority member.

Substitute members

Some authorities operate a substitute system. This allows a substitute member to attend a meeting of the committee or sub-committee whenever a regularly appointed member cannot be present. However, we do not recommend the use of substitutes for joint standards committees.

In instances where all your independent members are unavailable, you would be able to substitute your independent members with independent members from another authority. You should also note that nothing in the regulations requires a sub-committee of a standards committee to have fixed membership or chairmanship.

Training

It is important when assessing complaints, reviewing assessment decisions and holding determination hearings that the sub-committee is properly constituted and that members are trained on the Code and the relevant legislation. We recommend that you keep a clear record of the training of all standards committee members. Some authorities provide refresher training before hearings.

Paragraph 15(2)(a) and (b) require the terms of reference of a joint standards committee to include the functions and administrative arrangements under which the joint committee will operate.

Functions

The joint standards committee can carry out any of the functions of a standards committee granted by or under Part III of the Local Government Act 2000 or Part 1 of the Local Government and Housing Act 1989. Some authorities have conferred other functions on standards committees under Section 54 of the act. These include:

- overview of the whistle blowing policy
- advising on the content of the authority's officer code of conduct
- overview of complaints handling and Ombudsman investigations
- oversight of the constitution

These functions may not be allocated to a joint standards committee as they are not granted by Part III of the Local Government Act 2000 or any regulations made under that Part. They therefore need to remain with the authority's standards committee, or be reallocated elsewhere.

If a joint standards committee exercises a certain function – that function cannot also be exercised by a standards committee of any of the authorities involved in the joint arrangement. Therefore, the authorities involved in a joint standards committee arrangement must all agree which of their functions they wish the joint standards committee to have.

An authority cannot assign functions to a joint standards committee only to deal with

particular complaints. For example, a complaint might be made about a dual-hatted member, or any member who belongs to more than one authority. In such cases, the authority cannot set up a joint assessment sub-committee with the other authority or authorities that the member belongs to but also continue to use its own assessment sub-committee for complaints about single-hatted members. The functions assigned to a joint standards committee are applicable for all complaints received by the authority.

Lead authority

In any joint standards committee arrangement there should be one authority with responsibility for making the administrative arrangements necessary for it to operate. This responsibility may rotate over time.

Sub-committees

Where a joint standards committee arrangement has been set up just to carry out initial assessments or initial assessments and reviews, it will be necessary to set up sub-committees to carry out those functions under regulation 6 of the Standards Committee (England) Regulations 2008. Membership of these sub-committees will need to be drawn from the joint standards committee.

Meetings

Meetings of the joint standards committee and its sub-committees should be arranged by the lead authority's monitoring officer in consultation with the monitoring officers of the other authorities involved in the joint arrangement.

Any committee or sub-committees should have a minimum of three members. However, ensure you pay attention to the detailed requirements of paragraph 7(3) of the Standards Committee (England) Regulations 2008 as amended by paragraph 14(5)(e) of the Standards Committee (Further Provisions)(England) Regulations 2009.

A committee or sub-committee must have at least one elected member on it, where it is dealing with any of the following:

- making an initial assessment of a case
- reviewing an assessment
- considering what to do with a monitoring officer's report on an investigation
- holding a hearing

If the case concerns a parish member or former parish member then the committee or sub-committee must also have a parish representative present. The elected member and parish representative do not have to be from the same authority as the member whose case is being considered.

Preparation of agendas and minutes

The monitoring officer of the lead authority should prepare the agenda for meetings of a joint standards committee or its sub-committees. This can be done in consultation with the monitoring officers of the other authorities involved in the joint arrangement who would normally be expected to prepare reports about cases from their own authorities.

Any joint arrangements will need to clearly identify who will have responsibility for:

- notifying the parties of any decisions made
- for preparing the minutes of the meeting
- for preparing the summary of proceedings under regulation 8(5) of the Standards Committee (England) Regulations 2008
- the summary under Section 57C(2) of the Local Government Act 2000 to the member complained about

Ultimate responsibility for these tasks lies with the monitoring officer of the authority the subject member comes from. However, the monitoring officer of the lead authority could carry out those tasks on their behalf as long as the joint arrangements make this clear.

Standing orders/procedure rules

As with any other committee of a local authority, you will need rules to govern the way in which meetings are administered and conducted. See Appendix 2 of the model constitution, attached at the end of this document, which sets out a suggested format for those rules.

Financial arrangements

Any joint standards committee arrangements should be clear about how the financial expenses of the arrangements will be met. We recommend that the joint committee should have a budget which is held separately from that of the constituent authorities by the chief financial officer of the lead authority. We also recommend that the budget is

managed by the lead authority's monitoring officer.

The basis on which the expenses are shared should be clearly set out in the joint standards committee's terms of reference. Much will depend on the functions carried out under the joint arrangement. For instance, where the joint standards committee has been set up to deal with initial assessment and review cases, the expenses might be shared based on the number of cases submitted for consideration by an authority as a proportion of the total cases considered. So an authority submitting 30 cases in a year from a total of 50 considered under the joint arrangement would pay 60% of the expenses incurred.

Any disagreement about the proportion of expenses that should be met by an authority involved in the joint arrangement must go to a single arbitrator agreed between the authorities. This is as required by paragraph 15(3) of the regulations.

Withdrawal from joint arrangements

Under paragraph 15(2)(g) of the regulations, the authorities entering into a joint arrangement must make sure that there is a procedure set out in the terms of reference to enable an authority to withdraw from the arrangement.

Any such procedure should ensure that any authority which wants to withdraw has to give sufficient notice before doing so. This is to enable the remaining authorities involved in the joint arrangements to:

- 1) consider what changes they need to make to the terms of reference and have time to implement those changes
- 2) decide how to deal with the financial consequences of the authority withdrawing.

We suggest a minimum notice period of six months in order to achieve this.

The terms of reference should make it clear what financial consequences flow from a decision by an authority to leave a joint arrangement. For example, six months' notice expiring on the 31 March might be required to withdraw from a joint arrangement. If this were the case, it would enable the authorities left in the joint arrangement to make proper budgetary provision for the joint arrangement in the following financial year, as part of their normal annual budget preparation process. It would also give them time to agree and implement any changes to the joint arrangements that they wish to make. They would additionally be able to sort out how to deal with forthcoming cases when the joint arrangement is disbanded or altered.

Suspension from joint arrangements

Under paragraph 3(3) of the regulations, the Standard Board for England can use its powers under Section 57d of the Local Government Act 2000 to suspend the initial assessment functions of a joint standards committee in the same way as it can a normal standards committee.

Providing information to the Standards Board under sections 66B&C of the Local Government Act 2000

The Standards Board can demand periodic returns from authorities and information from them relating to the functions of standards committees and monitoring officers. Therefore any joint arrangements should ensure that responsibility for compiling returns and responding to requests for information is properly identified within the administrative arrangements agreed between the authorities.

Where there is a joint arrangement in place, the monitoring officer of the lead authority will be required to submit information about the composition of the standards committee.

Case information, even where the case was dealt with by a joint standards committee, must be submitted by the monitoring officer at the authority to which the subject member belongs.

Agenda Item 11

Standards Committee

3 November 2009

RP



Memorandum of understanding between Standards for England and the Local Government Ombudsman

Summary

Standards for England and the Local Government Ombudsman have agreed a protocol to deal with their respective and sometimes overlapping jurisdictions.[See Appendix]. Standards for England role is primarily as the lead regulator in connection with breaches of the Code of Conduct and in giving strategic guidance to prevent them. The Ombudsman's role is concerned with investigating complaints of maladministration against certain public authorities.

Recommendation

1. That Committee notes the contents of the memorandum of understanding between Standards for England and the Local Government Ombudsman and considers the implications for the Council.

2. Considers whether any further steps should be taken in connection with the memorandum.

a) Reasons for Recommendation

To promote good governance and public understanding of the differing roles of Standards for England, Standards committees, and the Local Government Ombudsman.

b) Alternative Options

To ask for a more detailed officer report.

c) Risk Considerations

Delay, duplication and misunderstandings about jurisdiction may result if members and officers do not apply the contents of this report and the protocol.

d) Policy and Budgetary Considerations

Consistent with promoting good practice; no additional expenditure anticipated.

e) Date for Review of Decision

March 2011 by Standards Committee and perhaps the relevant Overview and Scrutiny Committee.

1. Background

In May 2008 the role of the Standards Board changed. It no longer receives complaints centrally nor decides whether to refer them for investigation. Instead, a locally based system is now in operation whereby the Standards Committees of local authorities are responsible for in initial assessment, referral, investigation and hearing of complaints.

The Standards Board will continue to investigate the minority of cases which cannot be taken on locally (for reasons such as seriousness, complexity, potential for precedent setting, conflicts of

interest, or impact on the public interest). The Standards Board will also continue to give strategic advice and support on case handling and broader governance issues. In view of the changed role of the Standards Board [now rebadged as Standards for England] the Ombudsman and Standards for England have agreed a memorandum of understanding.

2. Purpose of memorandum

It sets out the respective roles and responsibilities of Standards for England and the Local Government Ombudsman in order to:

- provide guidance to staff about the nature of complaints which will be of interest to each party, how such complaints should be handled and the advice that should be given to complainants;
- assist members of the public to identify the appropriate body to which to make a complaint;
- assist advice agencies to direct complainants to the appropriate body; and
- be available for local authorities and members of those authorities for their information

2. An example of the possible overlap between ombudsman and standards functions

In practice, a complaint about councillor conduct can give rise to allegations of breach of the Code against the individual councillor and a complaint of maladministration against the local authority concerned.

The overlap between Standards Board for England Bulletin Issue 42 gives this example:

“R (on the application of Gardner) v Harrogate Borough Council [2008] ALL ER (d) 310 (Nov)

A recent case in the High Court has brought attention to the common law test of bias and planning decisions. The Local Government Ombudsman (LGO) and the Standards Board for England both received complaints about a planning matter. An ethical standards officer from the Standards Board and the LGO both proceeded to investigate the case. Each of the investigations were designed to draw out relevant evidence for the separate jurisdictions of maladministration (LGO) and of a breach of the Code of Conduct (the Standards Board). The case draws attention to matters which can cause concerns affecting both jurisdictions. However, it also highlights where they part company in practice and in the application of the relevant law. We recommend all monitoring officers and members refer to the concise court decision ([2008] ALL ER (D) 310) for an understanding of this area.

The ethical standards officer did not disagree with the findings of bias affecting maladministration which was the basis of the LGO decision, as he did not consider bias as part of his investigation. Rather the ethical standards officer's investigation was mainly concerned with personal and prejudicial interests and the evidence of close friendship. Conversely, the LGO's investigation was not designed to draw evidence of a breach of the Code.

In the case above, Councillor A was granted planning permission on the casting vote of Councillor S. The permission was granted against strong officer advice and major planning policy reasons which did not support granting permission. There was a connection between both councillors and it was the nature of this connection which drew the distinction between the two jurisdictions, the investigations and the relevant law to be applied in both.

For the purposes of the ethical standards officer's investigation, the evidence did not suggest a “close friendship” and therefore no breach of the Code was found. However, the Court said that “It does not follow that that there will be no apparent bias if the relationship is less close” (see paragraph 16 of the judgment). So there was apparent bias acknowledging that both councillors were friendly acquaintances.”

3. What the Standards Board and Ombudsman will do in practice.

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when complaints are received by one body, but could also be made to the other. Where either party receives complaints that are within jurisdiction but could also be made to the other party, complainants will be advised that they can also make a complaint to the other party or the local standards committee. If the allegation of member misconduct is not solely determinative of the question of maladministration causing injustice, the Ombudsmen will consider whether, on the facts of each case, they can reach a view without a definitive view of the member conduct.

4. The Local Government Ombudsmen:

- can investigate complaints from members of the public claiming personal injustice as a result of maladministration by or on behalf of a local authority or other body [including the actions of its Standards Committee and/or its Monitoring Officer];
- can investigate actions of members and officers;
- can recommend that an authority provide a remedy (often financial) for the complainant;
- can issue reports and guidance;
- cannot normally investigate a complaint until the authority has had an opportunity to consider it first; and
- cannot determine whether a member has breached the Code of Conduct.

Parish Councils are not included in the Ombudsman's jurisdiction so members of the public cannot get redress for maladministration through the Ombudsman route. This may result in this council receiving complaints of breach of the Code in respect of parish councils which would perhaps be better addressed by the Ombudsman [who has the power to recommend compensation in cases of maladministration causing injustice] if parish councils were to be included in the Ombudsman's jurisdiction.

5. The Standards Committee and the Ombudsman

As stated above, the administration and decision-making processes of the Standards Committee, its sub-committees and the Monitoring Officer may be subject to an Ombudsman complaint, investigation and recommendation for the payment of compensation where there is maladministration causing injustice.

6. Conclusion

Members are invited to consider the contents of the memorandum and decide whether they wish any further action to be taken.

Legal Implications

Include in the report.

Financial Implications

There appears to be no financial implications for the Council.

Rachel Pocock ext 2601
Head of Legal, Licensing and Democratic Services

Standards Committee
3 November 2009

MEMORANDUM OF UNDERSTANDING

between

COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND AND THE STANDARDS BOARD FOR ENGLAND

FEBRUARY 2009

1. INTRODUCTION

The work and areas of responsibility of the Commission for Local Administration in England (the Commission) and the Standards Board for England (the Standards Board) are related. So they need to cooperate in order to ensure that their respective roles can be fulfilled effectively and efficiently. This memorandum of understanding has been agreed by the Commission and the Standards Board to lay the foundation for such cooperation.

In particular, this memorandum sets out the respective roles and responsibilities of the parties in order to:

- provide guidance to staff about the nature of complaints which will be of interest to each party, how such complaints should be handled and the advice that should be given to complainants;
- assist members of the public to identify the appropriate body to which to make a complaint;
- assist advice agencies to direct complainants to the appropriate body ; and,
- be available for local authorities and members of those authorities for their information

2. DEFINITIONS and ROLES

A potential complainant may be unsure where to direct his/her complaint. The respective websites at lgo.org.uk and standardsboard.gov.uk will provide more information but the key points are as follows:

The Commission for Local Administration in England (the Commission) was established under the Local Government Act 1974 and consists of three Local Government Ombudsmen and the Parliamentary and Health Service Ombudsman (ex officio). The Local Government Ombudsmen:

- can investigate complaints from members of the public claiming personal injustice as a result of maladministration by or on behalf of a local authority or other body
- can investigate actions of members and officers
- can recommend that an authority provide a remedy (often financial) for the complainant.
- can issue reports and guidance

- cannot normally investigate a complaint until the authority has had an opportunity to consider it first
- cannot determine whether a member has breached the Code of Conduct.

The Standards Board for England (the Standards Board) was established under the Local Government Act 2000 (amended by the Local Government and Public Involvement in Health Act 2007) to promote high standards of conduct by local authority members, and to investigate complaints of breaches by members and co-opted members of their authority's code of conduct (the Code of Conduct).

On 8 May 2008, the role of the Standards Board changed. The Standards Board no longer receives complaints centrally nor decides whether to refer them for investigation. For complaints received on or after 8 May 2008 the **Standards Committee** of a council will now receive and assess new allegations which must be made in writing. The Standards Committee is appointed to maintain and promote high ethical standards. It will decide whether complaints appear to reveal a breach of the Code and if so whether they merit investigation, other constructive action or no action. Standards Committees must have a review mechanism for complainants if they wish to appeal a decision not to investigate.

Complaints about Standards Committees

Standards Committees are within the jurisdiction of the Ombudsmen. It is possible therefore to make a complaint of maladministration causing injustice as a result of some action or inaction by a Standards Committee or council monitoring officer about the handling of a complaint (e.g. delay or bias).

Parish Councils are outside the Ombudsman's jurisdiction. But there is no jurisdictional bar to investigating the actions of a standards committee of a District Council in respect of the committee's actions in respect of a complaint about a parish council.

But in respect of other Councils within jurisdiction, the Ombudsmen have a discretion and will consider each complaint on its merits. In doing so the Ombudsmen recognise that the Standards Board is the body established by statute to oversee member conduct. But in some circumstances they may wish to consider allegations of administrative fault where the complainant can claim to have suffered an injustice from the fault alleged.

All complaints to the Ombudsman about Standards Committees should be drawn to the attention of the Ombudsman him/herself, or someone authorised by the Ombudsman to consider such complaints, as soon as possible after receipt.

The new role of the Standards Board is to be the strategic regulator of members' conduct, monitoring local arrangements and ensuring they are effective. Ethical Standards officers, who are employees of the Board but are independent in their investigating role, can now:

- investigate complaints referred to them by the Standards Board only when the relevant local standards committee has asked the Board to undertake investigation; and, if appropriate,
- refer a matter to the standards committee of the authority concerned or to the Adjudication Panel for England. These bodies can impose sanctions, including up to a five year disqualification from office, for members who are found to have breached the Code of Conduct. However, none of them can provide or recommend a remedy for a complainant.

3. WHO CAN MAKE A COMPLAINT

Anyone can make a **complaint to the standards committee** of an authority regulated by the Standards Board. Except for some criminal offences (when the relevant legislation is brought into force), complaints must concern the conduct of a member which occurred when he or she was a member of the authority and had undertaken to abide by the Code of Conduct.

A **complaint to the Ombudsman** may only be made by, or on behalf of, a member of the public or a body of persons other than a local authority or other public service body. A complainant must be able to claim a personal injustice. An elected member may only complain to the Ombudsman about something which affects him/her personally as a member of the public. This includes actions of the authority's standards committee and officers carrying out functions in relation to the standards committee.

Throughout this memorandum those persons and bodies able to make complaints are defined as 'complainants'.

4. COVERAGE OF AGREEMENT

This Memorandum concerns all dealings between the parties in respect of the following English authorities:

county councils,

unitary authorities (from 1 April 2009)

city and district councils,

London borough councils,

the Greater London Authority,

the Metropolitan Police Authority,

the London Fire and Emergency Planning Authority,

the Common Council of the City of London

the Council of the Isles of Scilly,

fire and rescue authorities

police authorities,

joint authorities established by Part IV of the Local Government Act 1985,

the Broads Authority, or

national park authorities

There are some authorities where one party has jurisdiction but the other does not. A significant example is town and parish councils which are not within the jurisdiction of the Commission.

5. DISCLOSURE OF INFORMATION

Section 67 of the Local Government Act 2000 provides powers for an ethical standards officer and an Ombudsman to consult if either of them believes that matters which are the subject of their own investigation could also partly or wholly be matters which could give rise to an investigation by the other. In particular, the LG A 2000 disapplies the restrictions on information sharing by an ethical standards officer contained in section 63(1) of that Act and similarly disapplies the restrictions on information sharing by an Ombudsman contained in section 32(2) of the LGA 1974.

Both the Ombudsman and ethical standards officers are therefore able to share information, including, but not restricted to the conduct of the investigation, where this would allow the other to fulfill their functions. This does not require the consent of the complainant or others involved in the investigation, and comments or consent will not normally be sought for this. However, there is no compulsion under legislation for either party to share information. And there is no provision which allows joint investigations.

The Ombudsman is also able to consult and share information with the relevant standards committee of a local authority. Again the comments or consent of the complainants and members involved will not normally be sought.

6. LIAISON AND COOPERATION

Neither the Standards Board nor the Commission has a statutory obligation to consult or cooperate with the other. Further, neither party needs to rely on the findings of the other in order to consider a complaint. However, since the objectives of both organisations, though differently worded, are to support and improve the work of local government, both parties wish to deal with complaints in the most appropriate, timely and cost-effective manner.

Each party will want to deal with complaints as quickly as possible. But occasionally it may be sensible for one party to delay investigation of a complaint pending the outcome of investigation by the other party and, among other things, the parties will have regard to the wishes of the complainant. If it is decided to delay investigation, the complainant should be informed.

Complaints may have some common features, without being exactly the same. For example, a complaint to the Ombudsman may allege administrative fault in a number of respects, only one of which is an allegation of a breach of the Code of Conduct by a councillor.

Each party will need to consider a complaint made to it in the normal way in accordance with its own jurisdiction and procedures. This may result in an early decision by one or other party.

For example, the Standards Board may decide at an early stage that a complaint should not be investigated.

As far as the Commission is concerned there could be an early decision for example:

- if the authority has not had an adequate opportunity to consider the complaint and the Ombudsman determines the complaint as 'premature' and refers it to the authority for consideration;

- if the Ombudsman considers that, even if there was an administrative fault there was no or insufficient injustice to the person complaining and therefore exercises discretion not to investigate the complaint; or,
- if the authority takes early action to provide a 'local settlement' which the Ombudsman considers a satisfactory resolution of the complaint.

But inevitably there will be some complaints made to both parties that require extensive consideration by both.

When complainants, members or third parties are advised about the possibility of the involvement of the other party, they need to be told that information may be shared; and given details of the respective retention and destruction policies for documents.

7. HOW COMPLAINTS ARE HANDLED

Complaints within the Standards Board's jurisdiction only

The Standards Board will follow its own procedures where it receives complaints that clearly fall solely within its own jurisdiction.

Complaints within the Ombudsman's jurisdiction only

The Ombudsmen will follow their own procedures where they receive complaints that clearly fall solely within their jurisdiction, eg complaints that members have acted with maladministration, but not in breach of the Code of Conduct.

Complaints that are made to the wrong party

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when they receive complaints that could be made to the other party. If the Standards Board receives complaints that fall exclusively within the Ombudsmen's jurisdiction it will advise complainants accordingly. Where the Ombudsmen receive complaints relating to an alleged breach of the Code of Conduct it will advise complainants that such complaints are outside jurisdiction, but that they could make a complaint to the authority's standards committee. If the question of maladministration causing injustice will be determined by whether or not the authority's code of conduct has been breached, the Ombudsman may wish to consider the matter again in the light of the Standards Committee's decision.

Complaints made to one party, but could also be made to the other

The Standards Board and the Ombudsmen will have regard to the wishes of the complainant when complaints are received by one body, but could also be made to the other. Where either party receives complaints that are within jurisdiction but could also be made to the other party, complainants will be advised that they can also make a complaint to the other party or the local standards committee. If the allegation of member misconduct is not solely determinative of the question of maladministration causing injustice, the Ombudsmen will consider whether, on the facts of each case, they can reach a view without a definitive view of the member conduct.

Complaints sent to both parties

The Ombudsmen and ethical standards officers will liaise on a case-by-case basis where a complaint is sent to both parties and either or both parties have been informed that this is the case. Contact will be made as soon as practical after it is known that a complaint has been made to both parties. In cases where the finding of maladministration causing injustice depends on whether a member has breached the Code of Conduct, the Ombudsman will await the Standards Board's decision. This is because the Ombudsman cannot determine whether there has been breach of the Code.

Those where the position is unclear

One party may receive a complaint and it may seem possible, but not certain, that a complaint has been made to the other. In such circumstances, enquiries will be made of the complainant or the other party in order to clarify the position.

Complaints that are for neither party

These will be dealt with according to each party's own arrangements. Where it is known, the person complaining will be informed of any other possible avenues for the complaint.

8. OPERATIONAL MATTERS

Where contact on operational matters is required, this should be between the Standards Board's Director of Casework and the appropriate Deputy Ombudsman, or members of staff authorised to act on their behalf.

The following operational matters will be decided on a case-by-case basis:

- the detail and type of information to be disclosed to the other party;
- arrangements for regular review of case progress;
- arrangements for ensuring the other party knows the proposed outcome of an investigation in time to comment
- any other issues that may be relevant to each party's ability to investigate the complaint;
- whether it would be appropriate to seek comments or consent of any other person; and,
- any other issues that may be relevant to the complaint.

9. GUIDANCE

Arrangements will be made for communicating the provisions of this Memorandum within the Standards Board and the Commission.

Each body will, where appropriate, send enquirers a copy of the other body's general information leaflet.

The Standards Board and the Commission will ensure that the provisions of this memorandum are followed by each party and that the memorandum is clear to the public, local authorities and advisory bodies.

The Standards Board and the Commission will regularly review this memorandum so as to ensure that developments and changes in the practices and working relationships of both bodies are adequately reflected.

The Standards Board and the Commission will regularly convene meetings to discuss other matters of common interest.



**Chair
Standards Board for England**



**Chairman
Commission for Local
Administration in England**

Agenda Item 12

Report From Ray Davison of Annual Assembly of Standards Committees in ICC Birmingham 12-13 October 2009

Let me begin by thanking EDDC for sending me to this Assembly and a special vote of thanks to Jill Sentence for arranging the accommodation and transport.

I must say the Assembly was a comprehensively positive experience and I have returned with my head full of notions of good practice and data from other Standards Committees, which I hope will be of some use as we undertake our review of best practice locally.

Focus On The Essentials

The Assembly opened with this introductory session, designed principally for new members. Glenys Stacey (Chief Executive, Standards for England - the new name for our parent body) outlined the history of the organisation from the Local Government Act 2000, through to the 2007 Code of Conduct and Local Assessment in 2008. SFE was now the strategic regulator with a monitoring and guidance role. We are promised a new DVD on the developing relational frameworks between us and the national body and local assessment but she was very clear that the best local committees were proactive in creating the growth conditions for standards and good governance. She emphasised the role of the code in generating greater transparency of standards and the need for training to promote awareness of its clauses among members and the public.

Mark Jones (Principal Lawyer SFE) followed by drawing our attention to a revised code to be published later this year and to new guidance available on the legal definition of predetermination and on the private/official interface. He directed us to the national websites to explore best practice in terms of Joint Committees, Dispensations and the monitoring of Gift and Expenses Policies. He also warned that some LAs were taking too long to process their cases and could face suspension of their functions if this continued.

I gained from this session the sense that SFE and local committees generally were growing into a powerful instrument for the promotion of a culture of standards well beyond the statutory functions originally bestowed upon them.

State Of The Nation

This was the first plenary and it opened with a video link to Rosie Winterton. She was full of praise for SFE which would be making a vital contribution to the enquiry into Standards in Public Life. Dr Robert Chilton (Chair of SFE) followed with a sanguine assessment of the future of SFE. Standards were now a major political issue and he doubted that the Opposition Paper Control Shift (= abolish SFE) would be implemented, even if the Govt did change at the election. He noted that Spelman had not commented on the proposed abolition. Whatever the future had in store, he and SFE would continue with 'Project Excellence' their initiative to improve performance by reducing vexatious complaints, speeding up processing and generally working toward 'embedding' the culture of standards which was the key to trust.

Glenys Stacey then spoke again. Apparently there are 80,000 members of Standards Committees in England who have dealt with 2863 complaints between them of which 53% required no further action. She had no figures for the total cost of all this (only the budget for SFE of 7.6 million was known). Many more such statistics are available online. It would seem that the principal complaints about us are that we are too slow, too complicated, too political, too eager to comply and too expensive. Project Excellence, no doubt, will address these alleged problems.

The First Workshop

This was on 'Actual and Apparent Pre-Determination' and involved interactive analysis and discussion of three cases. I was on a wonderful table-load of Jesuitical brainpower with MOs, CEOs and a Chief Whip from Islington who had the curious capacity to remind me of myself (he loved argument!). This was a really satisfying session and it was enjoyed by everybody, except, perhaps, the lawyer in charge. The new legal advice on this issue almost made it look as though it was impossible to define actual predetermination without help from a divine source. Much money would obviously be made by lawyers decoding the legal niceties of the distinction. I did wonder if Spelman's comment that her Govt, if elected, would abolish pre-determination altogether, was not an area where I might actually be pre-disposed to agree with her. Guidance on pre-determination is available on the website but you will probably need a judge to help you understand its ramifications.

Plenary Two: The Big Debate

The issue debated was whether the local standards framework was 'a force for good or a necessary evil'. In truth there was not much of a debate in this audience, as almost everybody was in favour of the new framework. Indeed, there was such an appetite for their work that they wanted their committees to go beyond the statutory requirements and become much more pro-active on several fronts. This appetite for a pro-active approach was also much in evidence in workshops two and three, so I shall summarise the suggestions made in this regard within those reports. Nonetheless, to try and stimulate a debate, one of the speakers did make reference to our expensive, over-bureaucratised, over-complicated, cumbersome procedures and attacked SFE as a burden on the public purse (resource intensive) with its excessively regulated practices. And a member of the audience wanted to abolish all parish councils, as they were often a source of trivial and vexatious complaints. There was also reference to whether the public interest was served by a body that could not quantify the cost of all its activities but such voices were in a wilderness.

Workshop two: putting the public in the picture, discussion forum: sharing good practice and workshop three: the highly effective standards committee.

I have composited reporting here because there were significant areas of overlap in content. Basically these sessions allowed delegates to compare and contrast practice. It was clear to me that many committees are significantly more pro-active than we are. For example, most committees were meeting for their ordinary meetings four times a year (some met monthly or

bi-monthly and cancelled if they did not have business) This generated continuity of focus and purpose. We were told that good practice required that we produce a work-plan to map out what we should be doing to spread public and member awareness of our work, procedures and the code. It was recommended that the Independent Chairs should have pretty regular meetings with the CEO, MO and Leader. Standard Committee members should have a high profile among members and the public and there should be press liaison work to back this up. A speaker from Rossendale Borough Council, which had received an award for its practice as a Standards Committee, outlined what they had done, on a relatively small budget, to advertise their work. This included the production of coasters for council use with words such as EDDC Standards Committee Promoting High Standards in East Devon! Rossendale also had a media protocol which included training to conquer fear and an extensive website. It was also clear that engaging the parishes by regular contact between them and SC members was a desirable practice. Regular reviews of SC impact should be built into meetings and SC members should be aware of public perceptions of their work and devise mechanisms for getting their message across. Embedding standards in local government and public awareness is what SC Committees should be about. SC should not be add-on instruments of governance but a central presence in local democracy and in the local community. SM members should be involved in Democracy Days. I feel there is a need for a great deal of considered thought on these matters and several others, which I have not mentioned to avoid inducing panic in the team. I hope our Committee will in due course examine these options in some detail. It may interest members to know that similar ideas were touched upon at the SWIM Conference in Bristol (which I attended with Rachel and 'parish-speaker' Simon Pollentine) but in far less depth and detail.

Plenary Three: On The Brink – Coming Back From Ethical Collapse

This was a strange plenary, since it seemed to be preparing us for the failure of the system we are trying to promote. I am more than happy to report that we are a long way from this in East Devon but recent developments in the Commons and the Lords are a red light on such possibilities. The session was overseen by Professor Alan Lawson, from Hull University, a specialist in public sector ethics. He was accompanied by Kim Riley but who held the distinction of having transformed Hull City Council from the worst local authority in the country to a three star rated and improving one. With him was Peter Moore, former acting Chief Executive in Lincolnshire after it had failed its Corporate Governance Inspection and part of the Improvement Board to redress the situation. Despite all our best efforts, ethical collapse can occur, public trust end and council relations degenerate into a conflictual impasse. Costly procedures are then needed to rebuild public confidence and a viable regime. Key to the avoidance of this process is apparently the skill, discretion and subtlety of the Independent Chair, so enough said.

Workshop Four: Managing Investigations With Confidence

I was disappointed to find that my table colleagues, despite being very experienced and high fliers, had not experienced a hearing between them and seemed rather alarmed that I had twice. Dialogue between us centred on who conducted the investigation (internal or external), MOs under political control, whether the SC should establish a practice for investigating and what were the pitfalls. There followed a most lengthy and uninspired talk on all the things that can and apparently did go wrong in Leeds. After 40 minutes my table emptied, but the saga continued without increase in momentum. It was a really detumesced end to what had been an exceptionally interesting and inspiring Assembly.

One Final Recommendation: almost every organisation sent more than one delegate and, although I see myself as a robust and communicative person, I really think a minimum of two is a better option. This will avoid the problems of inter-subjective tensions of the single person.

Agenda Item 13

Standards Committee

3 November 2009

CEH



Standards for England – Standards & Ethics- Good Practice

Summary

The ideas and innovations listed in this report are designed to promote standards and ethics. The ideas and schemes are a selection of those identified best practices of authorities that have been short listed in the past for the Local Government Chronicle (LGC) Standards and Ethics Awards, which is supported by the Standards Board for England.

Recommendation

- 1 that Members consider the areas of development as set out in Table 1.
- 2 that Members note the 2009 annual return survey responses to Standards for England.

1 Main Body of the Report

1.1 The following ideas and innovations to promote standards and ethics are a selection of the identified best practices of authorities that have been short listed in the past for the Local Government Chronicle (LGC) Standards and Ethics Awards, which is supported by Standards for England. Table 1 identifies potentially new practices or improvements used by those Councils short listed. These practices are stated to have worked well for the authorities concerned and the Standards Committee are asked to consider these and any other ideas they might have that could help promote standards and ethics within the council or the work done by the Standards Committee.

Table 1

Area of work	Council	EDDC Comment
Training & Skills Providing Parish Councillors with access to a new online training system (Leeds City Council); Electronic learning courses for Councillors on the Code of Conduct	Leeds City Council	EDDC website already provides some key information for Parishes and members. There is potential to develop electronic-learning, but there would be a resource implication to explore.
Communicating with staff and stakeholders An internal newsletter called 'governance matters' detailing the work of the Standards Committee (Leeds City Council); The slogan 'serious about standards' has been developed to help engage with staff	Leeds City Council Rossendale Borough Council.	The Council produce a weekly newsletter for members called 'Knowledge' This publication could include the work of the Standards Committee with minimal resource implications Committee could adopt this, or a similar one.

Area of work	Council	EDDC Comment
<p>Increasing confidence in local democracy</p> <p>Promotes the role of the Standards Committee through their local media</p> <p>Standards bulletins are published on their website (Rossendale Borough Council);</p> <p>Live web casts of council meetings (Lincolnshire County Council);</p> <p>Pen pictures of Standards Committee members could be placed in the annual report or other documentation promoting the work of the Standards Committee.</p>	<p>Newark and Sherwood District Council</p>	<p>Press releases at EDDC are handled as and when a decision or initiative is judged to be newsworthy. There is always a danger that 'press saturation' can desensitise the public.</p> <p>A web page for the Standards Committee could be developed.</p>
<p>Increasing confidence in local democracy (continued)</p> <p>A young filmmaker competition took place to help raise awareness of the Standards Committee's work</p> <p>The Chair of the Standards Committee wrote an article on the role of the committee, the Code and independent members for the local press</p> <p>An 'I'm a Councillor get me out of here' event was held to get young people and Councillors talking</p>	<p>Waveney District Council</p> <p>Ceredigion County Council</p> <p>Colchester Borough Council</p>	<p>The Democratic Services team carry out several events throughout the year to encourage young people in particular, to embrace the idea of democracy. This initiative could be expanded to include the standards agenda more explicitly.</p>
<p>Working in partnership with other authorities</p> <p>Adopted a deliberate policy to share learning and best practice regionally and nationally</p> <p>Development of a 'Parish Council Toolkit' with many adopting its model procedures</p>	<p>Newark & Sherwood District Council</p>	<p>We do work with neighbouring councils and share reports, procedures and training sessions where we can. The Deputy MO is also a member of the AcSes network (Association of Council Solicitors and Secretaries) which aims to share good practice.</p>

1.2 Also attached for Member's discussion is the 'Standards for England: Annual return responses 2009'. This survey summary includes all responses from authorities about their Standards Committees and activity in 2009 to date.

Legal Implications

There are no legal implications to report.

Financial Implications

The financial implications are difficult to identify at this stage but there may be some cost to the first two ideas in the table.

Background papers

Local Government Chronicle (LGC) Standards and Ethics Awards website
Standards for England: Annual return responses 2009

Christopher Holland
Democratic Services
Ext. 2743

Standards Committee
3 November 2009



Annual return responses 2009

This document provides an in-depth look at the responses to Standards for England's survey of standards committee activity in 2009.

Please note that:

- Where respondents were asked to answer in their own words, similar answers were put into groups, and a description of the five largest groups has been given.
- For some questions, respondents gave more than one answer to a question. The percentages quoted in the tables are percentages of all authorities that gave a response to the question. Therefore they will not add up to 100.

Section 1: Terms of Reference

Does the standards committee have Terms of Reference?

Yes: 99%

No: 1%

How is help provided to members on following the Code of Conduct? (Top five responses)

	% of responses
Training	90
Advice from officers	58
Briefings	23
SfE Publications (e.g. the Bulletin, our guidance, DVDs)	16
Regular reminders to declare interests	9

Does the standards committee have a forward work plan?

Yes: 51%

No: 49%

Who outside the standards committee is involved in agreeing the forward work plan? (Top five responses)

	% of responses
Monitoring officer	56
Other officer (e.g. Senior solicitor, Head of Legal, Head of Civic Services,)	34
No one	17
Chief Executive	12
Full council	10

Is the standards committee given a role in reviewing amendments to the authority's Constitution (or standing orders where appropriate)?

Yes: 50%

No: 50%

What was the Standards Committee's role in the most recent review of the constitution or standing orders? (Top five responses)

	% of responses
It reviewed some proposals (only those related to its work)	29
It made recommendations to full council about proposals	25
It reviewed items on its own composition, procedures and Terms of Reference	17
It reviewed various codes and protocols	13
It reviewed the Members' Code of Conduct	12

Section 2: The Standards Committee's Annual Report

Does the standards committee produce an annual report on its own work?

Yes: 59%

No: 41%

Is the Annual Report received by a meeting of the full authority?

Yes: 50%

No: 50%

Is the Annual Report sent to all members of the authority?

Yes: 53%

No: 47%

Is the Annual Report sent to all senior officers?

Yes: 45%

No: 55%

If an annual report is produced, how is it publicised to the general public? (Top five responses)

	% of responses
Council website	79
AGM or full council agenda	32
Standards committee agenda	12
Press release / local newspaper	11
Sent to town / parish councils or through parish council clerks	9

Section 3: Promoting Standards

What else does the Standards Committee do to communicate the role of the Standards Committee internally within the authority? (Top five responses)

	% of responses
Arrangement of and involvement in training / induction	33
Standards committee presence at other council meetings	29
Promotion via council website	20
Production of or contribution to newsletter / bulletin / poster	19
Circulation of minutes, meeting reports. Inclusion on agendas	15

What else has the standards committee done to promote confidence in local democracy to the wider public? (Top five responses)

	% of responses
Promotion via council website	40
Inclusion in council publications	21
Attending external meetings / opening meetings out to public	15
Promotion via the local press / media	10
Circulation of minutes, meeting reports, inclusion on agendas	8

Has the authority, or the standards committee in particular, considered how it will monitor and ensure high standards of behaviour when the authority is working in partnership with other organisations?

Yes: 48%

No: 52%

If yes, please provide examples (Top five responses)

	% of responses
Protocol for joint working, partnership framework, memorandum of understanding or similar document	32
Involved in reviews, audits or risk assessments	17
Issued guidance and advice	13
Discussed at standards committee meetings or other council meetings	12
Developed, delivered or attended training	10

Section 4: Training

Between 01/04/2008 and 31/03/2009, has the authority assessed the training and development needs of members in relation to their responsibilities on standards of conduct?

Yes: 75%

No: 25%

If yes, what training needs were identified? (Top five responses)

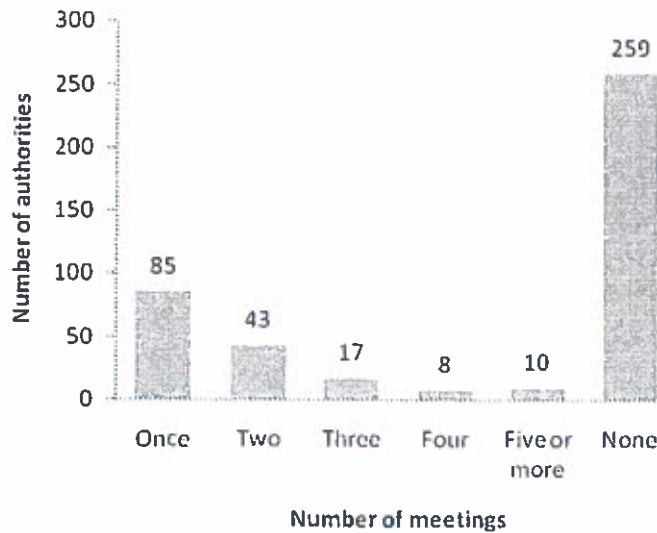
	% of responses
Local framework	41
Code of Conduct	37
Inductions for new members	9
Ethical governance/behaviour	8
Chairmanship skills	3

Please provide a list of training and development opportunities that have been provided to members and officers in the period from 01/04/2008 to 31/03/2009, that are relevant to ensuring high standards. Your list should include any training that relates to the operation of the local standards framework, e.g. local assessment and hearings. (Top five responses)

	% of responses
Local framework/assessment	66
Code of Conduct	58
Determinations (hearings)	17
Ethical standards generally	17
Chairing skills	6

Section 5: Leadership

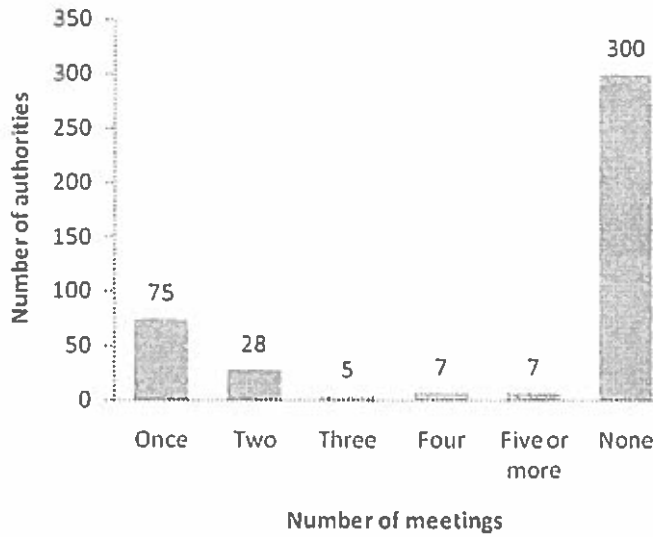
How often has the standards committee, or its chair, met the chief executive to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?



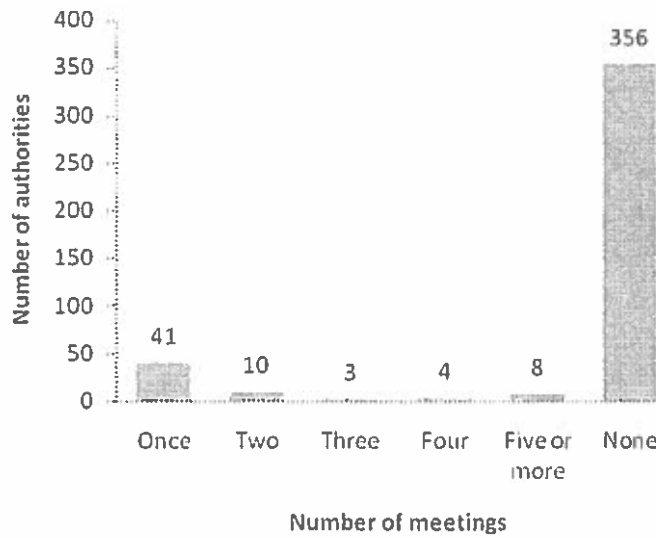
Please also provide an overview of what these meetings were about (Top five responses)

	% of responses
General ethical issues and assessment of standards in authority	18
Role and responsibilities of the standards committee	15
Local framework and assessment of complaints	11
Discussion or review of documents or reports e.g. Terms of Reference or Annual Report	9
Lessons learnt, action planning, future work or meeting agendas	9

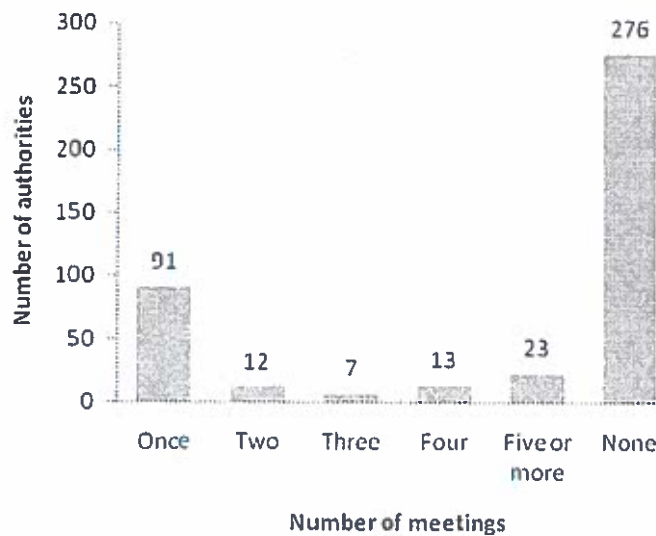
How often has the standards committee, or its chair, met the leader of the council to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?



How often has the standards committee, or its chair, met the other party group leaders to discuss ethical issues in the last 12 months (from 01/04/2008 to 31/03/2009)?



How many times from 01/04/2008 to 31/03/2009 has the standards committee chair been invited to address a full authority meeting?



Does the monitoring officer sit on the corporate management team?

Yes: 60%

No: 40%

If no, describe in what ways, if any, the monitoring officer has access to the corporate management team (Top five responses)

	% of responses
Monitoring officer has access to individual members of corporate management team	37
Monitoring officer is able to attend corporate management team meetings	35
Monitoring officer receives agendas, papers or minutes	31
Monitoring officer has access to chief executive or chair	27
Monitoring officer has access through other management teams or team members	16

Has an executive member (or senior member where appropriate) been given portfolio responsibility for standards?

Yes: 31%

No: 69%

Section 6: Complaints

Can the public access information, from the authority website, about how to make a complaint against a member?

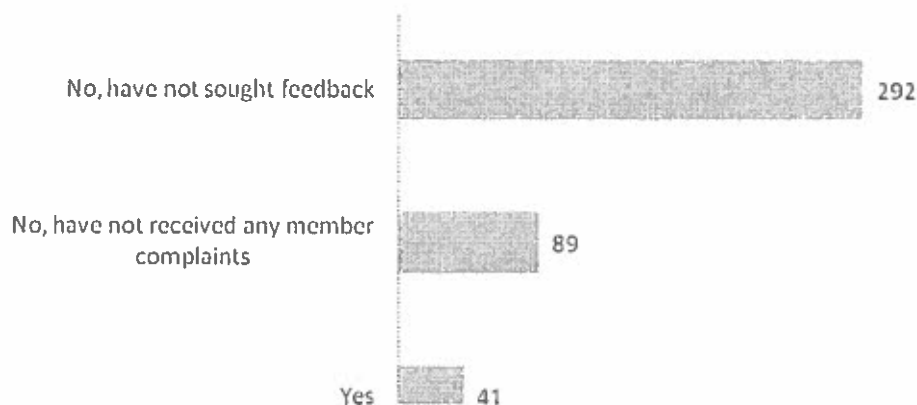
Yes: 94%

No: 6%

What else has the authority done to advertise the complaint process on member conduct to the general public? (Top five responses)

	% of responses
Information in local press	43
Information in council publications (e.g. news letter to all households)	34
Information displayed in public buildings/reception areas	24
Complaints leaflet	17
Advertising through parish councils	10

Has the authority sought feedback from any of those people involved in an allegation of member misconduct about their satisfaction with the member conduct complaint process? For example has the authority sought feedback from the complainant, witnesses or person against whom the allegation was made?



Where they have been undertaken, how does the authority communicate the outcome of investigations into member misconduct to members? (Top five responses)

Which members are informed?

	% of responses
Standards committee	20
Full council	15
All Members	4
Members who attend public meetings	3
Parish councillors (through their clerks)	3

How is the information given?

	% of responses
Report to standards committee	20
Standards committee agendas and/or minutes available to members	18
Regular report to full council by standards committee chair or monitoring officer	15
Letter and/or copy of report	12
Council web site	12

Where they have been undertaken, how does the authority communicate the outcome of investigations into member misconduct to officers? (Top five responses)

	% of responses
Report, minutes or other Standards committee materials, e.g. agendas	18
Website	9
Management team are informed	8
Related/relevant officers are informed	8
Written (email/letter)	6

Where they have been undertaken, how does the authority communicate the outcome of investigations into member misconduct to the general public? (Top five responses)

	% of responses
Minutes	20
In accordance with Regulations ¹	13
Annual/periodic report	8
Decision notice	5
Statutory notice	3

Where they have been undertaken, how does the authority communicate the outcome of allegations that have not resulted in an investigation to members? (Top five responses)

	% of responses
Communicated to the standards committee	24
Communicated to complainant and subject member	22
In writing	15
Included in minutes or agendas	14
Regular reports (e.g. annual, quarterly)	13

Where they have been undertaken, how does the authority communicate the outcome of allegations that have not resulted in an investigation to officers? (Top five responses)

	% of responses
Through minutes of meetings	55
Not communicated to officers at all	51
Communicated to senior officers	47
Only communicated if the officer was the person making the complaint	35
Through authority website	35

¹ Standards Committee (England) Regulations 2008

Where they have been undertaken, how does the authority communicate the outcome of allegations that have not resulted in an investigation to the general public? (Top five responses)

	% of responses
Meeting documents (agendas, minutes or reports)	20
Not communicated to the public	16
Through authority website	16
Only communicated if the member of the public was the person making the complaint	12
In accordance with Regulations ²	10

² Standards Committee (England) Regulations 2008

Section 7: Member-officer relations

Does the authority have a protocol for relations between members and officers?

Yes: 93%

No: 7%

If yes, how is the protocol communicated to officers and members? (Top five responses)

	% of responses
Constitution	64
Intranet	43
Induction / training	42
Handbook	8
Reported to full council	7

Does the authority include training on the importance of high standards of behaviour in the inductions of new members and officers?

Yes: 96%

No: 4%

Does the authority have informal mechanisms for dealing with member/officer and member/member disputes?

Yes: 84%

No: 16%

Section 8: Registering members' interests

Is the member register of interests accessible to the public on the authority website?

Yes: 34%

No: 66%

Is the register of gifts and hospitality accessible to the public on the authority website?

Yes: 21%

No: 79%

Section 9: Officer Conduct

Does the authority have a code of conduct for senior officers?

Yes: 77%

No: 23%

Does the authority compile a register of senior officers' interests?

Yes: 67%

No: 33%

If yes, is the register of senior officers' interests available to the public on the authority website?

Yes: 3%

No: 97%

Agenda Item 14

Standards Committee

4 November 2009

DV



Member Development (training) – up-date

Summary

The Council, through adopting the Member Training and Development Strategy and committing to the Member Development Charter has shown the importance it gives to member development. The Member Development Working Group meets regularly to discuss development issues, progress in respect of the Charter and to monitor development opportunities undertaken and planned to ensure that these have a direct link to the Corporate Strategy and represent value for money. The Working Group recommended the appointment of a Member Champion for Member Development; Councillor Ann Liverton was appointed Member Champion at the Annual meeting of the Council in May 2009.

One of the local Performance Indicators is to ensure that training is undertaken by all Councillors who serve on regulatory (Standards and Audit and Governance Committees) and those with quasi-judicial functions (Licensing and Enforcement and Development Management Committees). These are reported quarterly.

Recommendation

That the Committee notes the Council's progress in embedding Member Development within the organisation and considers making recommendations concerning future progress.

a) Reasons for Recommendation

The Standards Committee asked for an up-date on Member Development to be reported to the November meeting of the Committee. The Member Development and Training Strategy sets out the aim for member development to be embedded in the culture of the Council for the benefit of the Council and the community it serves.

b) Alternative Options

The report is presented to up-date Members of the Standards Committee in response to a request from Members and so there is no alternative option. However the Committee may wish to discuss the way in which the Member Development initiative is being rolled out.

c) Risk Considerations

The Standards Committee has asked for information on training in regulatory and quasi judicial Committees to monitor that this has taken place. This is presented for information and for monitoring purposes.

d) Policy and Budgetary Considerations

The training programme is within the current budget for Member training and conferences.

e) Date for Review of Decision

No decision as such but Members may wish to review this subject annually.

1 Main Body of the Report

The last report to the Standards Committee on Member Development was considered at its March 2008 meeting. This report reminds Members of the key points of that report and provides an up-date to the Committee on progress.

Background

The Member Training and Development Strategy was adopted by Council in June 2007 and the cross-party Member Development Working Group was set up to progress the Council's commitment to Member Development. The reports of these meetings are referred to the Executive Board for consideration. This ensures that all Councillors are kept up to date on the initiative and helps the Council to recognise its strategic importance. The status of Member Development has been further enhanced by the appointment of a Member Champion for Member Development at the annual meeting of the Council in May. (Remit of this Champion role is attached as Appendix A).

The Working Group agreed the format of the Members' Personal Development Reviews and recognised their purpose was to help the Council achieve its priorities through the development of its Members. The Group piloted the Reviews and actively encouraged other Members to take full advantage of this initiative. The on-going process is two-way with Councillors identifying their strengths and skills which can be used for the benefit of the organisation. This skills register was used by Group Leaders when considering allocation of Members to Committees and Outside Bodies and to positions of responsibility at the annual meeting of the Council in May 2009.

Councillors are regularly encouraged to take responsibility for their own development – this is not achieved solely through training sessions and seminars/conferences but may include attendance at Executive Board meetings, work undertaken at Task and Finish Forums, involvement in local democracy events and using the 'clickable' links to useful website articles contained in the EDDC's weekly newsletter, the Knowledge.

As at October 2009, all Councillors have undergone a Review and have a Personal Development Plan. Councillors are now being invited to up-date their progress through a 6 month review.

Learning needs identified through the Personal Reviews have now collated and a Learning and Development Plan has been considered and approved by the Working Group.

The Learning and Development Plan covers the following categories:

- Core skills
- Committee specific skills
- Community Skills and Leadership

Training in regulatory and quasi judicial Committees

The Committee specific skills element of the Learning and Development Plan includes training specific to Members appointed to regulatory and quasi judicial committees at the annual meeting of the Council – Standards, Audit and Governance, Licensing and Enforcement and Development Management. These are reported as a Local Performance Indicator.

To date all Members on the Standards, Development Management/Planning Inspections Committees and Audit and Governance Committees have undergone training and can now take an active role in the decision making process.

The Licensing Manager has arranged a number of training opportunities including shared sessions with other authorities but one Member appointed to the Licensing and Enforcement Committee has yet to attend. Until he has undergone relevant training, he cannot be

called to sit on one of the Licensing and Enforcement Sub Committees. If he remains untrained, despite opportunities, the Party Whip will be advised when allocation of seats is being considered prior to the Annual Council meeting in May 2010.

Shared learning

Members are encouraged to share their experience and learning. For example the relevant political group provided a Councillor appointed mid-term with an experienced Councillor to act as her mentor. Also Councillors attending Conferences are invited to complete a follow-up information sheet which is circulated to all Members as a way of sharing learning. (Sample attached as Appendix B).

Where possible, training events are shared with other organisations/authorities. For example the Chairmen of the 4 Overview/Scrutiny Committees attended a Scrutiny event organised by Mid Devon District Council and the Town Councils were invited to send a delegate to recent EDDC Planning Training for Members. In the feedback provided, the benefits gained from networking opportunities were clearly identified. Members will also recall that we have shared training on the new standards complaints assessment procedures with South Hams and Teignbridge procedures and have informal reciprocal arrangements to make 'other action' and training sessions available to other authorities within Devon.

Monitoring and Evaluation

The Member Development and Learning Evaluation Strategy was adopted by Council in July 2009. The Working Group has a role, together with the Standards Committee and the Strategic Management Team to monitor the effectiveness of the Member Development initiative, to ensure that the training and development helps the Council to achieve its priorities and also value for money. The Strategy requires on-going evaluation of Councillor Development at different levels, namely:

Level 1 evaluation to check that the development and training has achieved its aims and objectives; feedback to be used to influence the way learning opportunities is provided in the future.

Level 2 evaluation to check whether the development and training has achieved changes in attitudes and behaviours.

Level 3 evaluation to monitor the impact of development and learning on helping the Council to achieve its Corporate Priorities/aims.

South West Member Development Charter

EDDC submitted its Charter Action Plan to South West Councils and this has been accepted. The next step in achieving Charter status is the assessment process. The Files of Evidence have been submitted to the Assessment Team which will visit the Council for a day of assessment interviews at the end of the year.

The following is an extract from the covering letter of the File of Evidence submitted to the South West Council's Assessment Team in support of this Council's application for Member Development Charter Status. This has been signed by the Leader, Portfolio Holder-Resources, Member Development Champion and Chief Executive:

"At East Devon District Council we are constantly striving to improve and exceed the expectations of those living, working and visiting our district. The framework for accreditation of the South West Charter for Member Development has been an ideal way to progress our commitment to providing all of our Councillors with the tools to enable them to carry out their diverse roles effectively and to meet the challenges ahead. This portfolio of evidence, compiled to meet the criteria of the SW Charter for Member Development, is submitted with the support of the Council as a whole; recognising the value of the Council's investment in the development of all Members.

"This Council recognises that its Councillors are a key resource and bring with them a range of experience, knowledge and skills. A vital element of the Member Development initiative has been to identify their strengths so that these can be fully utilised and shared for the benefit of the Council and the community it serves. The identified areas of development have been used as the basis for the forward programme for Member Development; the areas of strength, skills and interests are now used as a reference point when making appointments to various positions, including Member Champions.

"The Council is currently facing a number of challenges, including the uncertainty of the outcome of the Local Government Review, changes in the way the Council is inspected/assessed, increasing public expectations, partnership working and budget shortfalls. The Member Development initiative is helping Councillors individually and collectively to develop their skills, knowledge and performance. This initiative links with, and supports, the Council's agreed corporate strategy and priorities. This means that the Council will be best equipped and prepared to meet the challenges in a positive way and will benefit all those who live, work and visit this district.

Legal Implications

Training on law and procedure is necessary to enable this Council to comply with the legal requirements placed upon it.

Financial Implications

Budgetary provision has been included for this item in the 2009/10 financial year.

Consultation on Reports to the Executive

- The Member Development and Training Evaluation Strategy was referred to the Executive Board in April 2009.
- The reports of the meetings of the Member Development Working Group are referred to Executive Board to be noted and discussed.

Background Papers

- Member Development and Training Strategy
- Member Development and Training Evaluation Strategy
- Reports of the meetings of the Working Group
- Charter Files of Evidence

Diana Vernon
Democratic Services Manager

Standards Committee
4 November 2009

Role and remit of Member Development Champion

- To act in a supporting role to encourage all Councillors to take up learning opportunities and promote the value of continual learning.
- To help raise the profile of Member Development within the Council, emphasising the fact that Member Development is for the benefit of the whole Council and district and is non-political.
- To act as a 'critical friend' to help identify possible areas for development through discussion with councillors and general observation at meetings.
- Similarly, to help identify the benefits gained as a result of development opportunities and how these support the Council's corporate strategy/priorities. This evaluation is necessary to ensure that we achieve value for money from the initiative.
- To work with the Portfolio Holder – Resources and Democratic Services to help identify learning opportunities and to allocate these opportunities in a fair and relevant way. This approach will ensure that the budget is used effectively and we achieve value for money.
- To help progress the Council's bid for Member Development Charter Status which will include promoting the initiative, checking the file of evidence and involvement in the interviews with the Charter Assessors
- To encourage effective communication between elected members and local town and parish councils.

The Member Champion to work closely and in consultation with the Portfolio Holder – Resources.

Appendix B

Royal Town Planning Institute Planning Summer School 4-8th Sept: 2009 Exeter University

The agenda over the four days was of a series of lectures/presentations and 1 study tour; the agenda looked daunting - we all wondered would we survive the course. The timetable was adhered to and the refreshments of coffee and biscuits were much needed mid morning and mid afternoon; the dining arrangements at lunchtime were very sustainable! The following is a précis of my last four days of information overload at the Exeter University.

Our first lecture was on “A new prospectus for rural England”, raising the question of sustainability in rural communities and the restrictive policies which rural development is constrained by. This session was very relevant to East Devon, one of the points raised was that central government needed to devolve authority and leadership to elected local government to help generate local sustainable lifestyles, facilities and services.

The next lecture was “A planning refresher for elected members”, this took us through the history of planning and 2009 marks the 100th anniversary of the 1909 Housing and Town Planning Act. This presentation helped to emphasise the role we play as members of Development Management and our link between our community aspirations and our role in Planning/Policy making and encouraging and enabling the right development in the right place.

“Planning something special” carried on the theme from the previous lecture and involved matters from eco towns to a need for a National Spatial Framework. Also a futuristic look at planning in 2109; will we still have Planning Committees debating over rear extensions then?

The next lecture was given by Jed Griffiths a very colourful character that has done member training at the Knowle and will be again. His lecture was called “Planning and propriety- behave yourselves!”; this is pretty self explanatory by the title however it just backs up that you need to be crystal clear as a councillor, with regard to planning and not have any grey areas.

“Lessons learned from the local development framework examination process”; was a lecture given by a government inspector and backed up all the hard work done by members to help keep things local, and back up the D.M. panel with a delivery service rather than control.

“Living Streets: How to achieve safe, attractive and enjoyable streets throughout the UK”; this presentation was given by an American who now lives in Bristol, he used Bristol as his example with the problems of congestion and modern living. He showed many examples of traffic calming and the re design of city streets to slow traffic down or to deter it. The problem of traffic and congestion sometimes make an area unsustainable just due to the volume of traffic and communities are at risk of

deterioration. Living streets are the way forward and planning/policy should help shape the future travel plans.

“Reducing the impact of development through sustainable design”; a very interesting lecture as “sustainable” is the new word that seems to be crucial in every planning decision, especially with 2016 and the zero carbon housing initiative. This was all about carbon footprints and the re designing of old buildings with modern technology to reduce carbon emissions.

“Delivering growth on the ground”; was a presentation about the problems faced by South Hams council with its high levels of second home ownership and the breaking down of communities. The new town of Sherford was presented with an explanation of its siting and the future growth towards Plymouth.

“Pub is the hub – rural services in pubs”; the lecturer John Longden explained the problems faced by rural communities especially the closing of the village pub and its repercussions. He explained the way that with independent support and partnership village pubs can survive by diversity; i.e. they can have secondary businesses such as a shop, Post Office, internet cafe, religious meeting place or even providing school meals. A very useful website: <http://www.pubisthehub.org.uk/>

“Tourism and economic development”; was a presentation from Devon County Council, it went into detail of the way DCC are trying to promote Devon as a great holiday destination. Also the way they are trying to persuade tourist attractions to extend the season and not just close after the school holiday periods.

“Enforcement & enforcement appeals”; was a lecture given by a government appeals inspector, who engaged well with all the members. There was a short presentation with an introduction into enforcement, followed by the Enforcement notice and getting it right followed by a question answer session which members recalled various cases that they had to deal with in the past etc.

Sunday was the afternoon for the study tour, this for me was Exeter city centre and we had a presentation first; starting with the devastation of the city during the 2nd World War and the rebuilding afterwards. Princesshay was possibly the first pedestrian only shopping precincts in the U.K. Princesshay has now been transformed to blend in with the medieval old Exeter.

We then had a walking tour around Exeter guided by officers from the city council whose remit was to deal with its retail industry. Exeter are really focused and looking forward at the way they can make the centre more vibrant and make the shopping experience exciting; promoting the city and bringing in the large retailers to provide their services.

Exeter is lucky that it does not have a large out of town Retail Park like some cities; it manages to keep the High Street names in the centre of the city and is proving to be a popular destination for retail therapy. I was very impressed by Princesshay and I am sure one of our Corporate Directors can take some praise for this excellent and innovative designed retail centre.

Last year at St Andrews Planning Summer School I had a very informative four days, this year the school seemed to interact more with the members and listen to us rather than just lecture us. I had a very informative time and felt exhausted after each day; however I was always keen to get going the next day for another information overload. The lecturers were all very knowledgeable and they could answer most of the questions asked and managed to cram as much into their allotted time slot as possible.

This year even though we have had an economic downturn there were plenty of acquaintances to network with that I met last year. I felt very privileged to have had the opportunity to attend this premiere event in the RTPI calendar; also to learn about the new thinking and best practices being led by the experts in their fields, who highlighted the need to keep us up with technical and new innovative approaches to planning.

It was a very upbeat four days and I do recommend attending the future planning training that is going to be provided at E.D.D.C. by Trevor Roberts.

Standards Committee Forward Plan

<p>March committee</p>	<ol style="list-style-type: none"> 1. Annual Report covering: <ol style="list-style-type: none"> a. The role, function and membership of the Standards Committee and its subcommittees b. Any relevant new legislation, guidance or rules c. Issues considered by the Committee in the last year d. Complaints received during the year and the Standards for England returns data e. Applications for dispensations f. Training g. Advice, policy and procedures h. Standards for England publications i. Ombudsman complaints j. Budget 2. New or amended legislation update 3. Forward Plan
<p>November committee</p>	<ol style="list-style-type: none"> 1. Election of Chairman 2. Report on Annual Assembly of Standards Committees 3. Complaints update 4. Member training and development update 5. Ombudsman's annual letter 6. New or amended legislation update 7. Forward plan

These are the main items, but there may be other matters arising through the year that members want to include too.