

## REPORT OF STANDARDS COMMITTEE

(Meeting held on 25 September 2009)

### 1. LOCAL CODE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS (REPORT C) (MINUTE 21)

The Committee has considered revisions to the Local Code for Councillors and Officers Dealing with Planning Matters.

This Local Code was last revised in January 2003. Since then, the Model Code of Conduct has been amended. Also, in 2003 the Association of Council Secretaries and Solicitors (ACSeS) launched a Model Planning Code of Good Practice, following consultation and comment from a number of local authorities through the ACSeS machinery, the Standards Board for England (now "Standards for England"), the Local Government Ombudsman, the Audit Commission and from firms of solicitors or counsel acting on their behalf. A Code based on the ACSeS Model has been adopted by numerous other local authorities.

Further, there have been two other recent publications: "Councillor Involvement in Planning Decisions", issued by the Department for Communities and Local Government; and an updated version of the Local Government Association's "Probity in Planning".

In the light of the above, it is considered that the Local Code for Planning should be updated.

The proposed revised Code is attached at Appendix 1.

Although the proposed revised Code looks different from the current version, most of the current code's content is consistent with the guidance in the ACSeS model. There are therefore few differences of substance, beyond those necessitated by the 2007 revision of the Code of Conduct (such as the right of members with a prejudicial interest in an application to make a statement to the Committee before withdrawing).

The Monitoring Officer and the Head of Planning and Transportation are to arrange appropriate training for members on the proposed revised.

The proposed revised Code has been endorsed by the Planning Development Control Committee.

#### **RECOMMENDED:**

***That, the revised Local Code for Councillors and Officers Dealing with Planning Matters be attached as Appendix 1 to this report, be approved with immediate effect.***

### 2. LOCAL ASSESSMENT OF COMPLAINTS – REVIEW OF PROCEDURES FOLLOWING FIRST YEAR OF OPERATION (REPORT E) (MINUTE 23)

The Committee has reviewed the existing procedures for the local assessment of complaints against District and Parish Councillors, following the first year of operation.

In doing so, the Council may wish to note that the Committee has now approved detailed criteria for judging whether or not it was appropriate to refer a complaint to the Monitoring Officer for action other than investigation. A Member complained about will now be notified of the complainant's name (unless he/she has requested confidentiality), but not be given any other information about the complaint.

One related aspect that the Council is required to consider is the question of whether NFDC would wish to enter into joint arrangements between this Council and local authorities for dealing with complaints.

Regulations came into force on 15 June 2009 permitting local authorities to establish Joint Standards Committees. The Regulations allow variations to suit local circumstances. For example, Joint Committees can be limited to initial assessment only, or to initial assessment and hearings following completed investigations, or they can carry out all the functions of a Standards Committee. Standards for England (SfE) acknowledges that the third alternative would be most appropriate for single purpose authorities such as police or fire authorities).

It should be noted that any joint arrangements would be entered into between New Forest District Council and other local authorities, not between the Councils' respective Standards Committees.

SfE acknowledges that 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 the area. Potential benefits of Joint Committees are stated to be:

- (a) avoiding conflicts of interest through having a wider pool of members;
- (b) consistency of procedures across participating authorities;
- (c) increased public confidence through a greater "distance" between Committees and complainants /subject members;
- (d) greater capacity to deal with increased workloads;
- (e) efficient and effective use of resources through sharing and pooling expertise;
- (f) raised profile;
- (g) ability to jointly commission and fund training, investigations etc;
- (h) opportunity to create stronger support and advisory functions.

Potential problems are:

- (a) initial difficulties and resource implications of identifying authorities willing to enter into joint arrangements, agreeing with them the extent of these arrangements and processes with them, and setting up legal agreements and terms of reference. (The Regulations are complex in this respect, and the difficulties and resource implications should not be under-estimated);
- (b) the system becoming overly bureaucratic and more complex;

- (c) differing resource implications for authorities within the arrangement;
- (d) loss of “local ownership”.

Hampshire local authorities have recently been consulting on whether there is any interest in forming a Joint Standards Committee specifically for the initial assessment of complaints. Among authorities that have responded, there appears to be little enthusiasm at present. To date this Committee has successfully resourced local assessment within its budget and resources, with all complaints to date being considered within the 20 working day guideline. Since the recruitment of further Independent and Parish representatives to the Committee, conflicts of interest have not led to difficulties in finding eligible members to sit on Sub-Committees. On more than one occasion an Assessment Sub-Committee has commented on the advantages of local knowledge in assessing complaints.

The Committee considers that, even if other authorities willing to join could be found, the disadvantages of participating in a Joint Committee arrangement would greatly outweigh the advantages.

***RECOMMENDED:***

***That no steps be taken to form a Joint Standards Committee arrangement with another authority at the present time.***

**J A G Hutchins  
VICE-CHAIRMAN**

## LOCAL CODE FOR COUNCILLORS AND OFFICERS DEALING WITH PLANNING MATTERS

### 1. Introduction

- 1.1 This Code contains guidance and best practice advice on probity in public office, including the common law principles of pre-determination and bias, in the specific context of planning.
- 1.2 It will be taken into account when a complaint is investigated, whether internally (e.g. by the Standards Committee), or externally (e.g. by the Local Government Ombudsman).
- 1.3 The rules in the statutory Code of Conduct should be applied first, followed by the advice set out in this local Code.
- 1.4 This Code covers any planning matter in which the Council is, or is likely to be, involved that relates to a specific area of land. This includes planning applications, planning policy land allocations, enforcement etc.

### 2. Why Have a Local Code for Planning?

- 2.1 This local Code aims to ensure the integrity of the planning system, and that it is, and is seen to be, open and fair to all parties.
- 2.2 Much is often at stake in planning. Opposing views can be strongly held. Private interests have to be balanced with the wider public interest. It is important that decisions are made openly, impartially, with sound judgement and for justifiable reasons. An aggrieved party may:
  - a. seek judicial review of the way the decision was reached; and/or
  - b. complain to the Local Government Ombudsman on grounds of maladministration; and/or
  - c. allege a breach of the Code of Conduct; and/or
  - d. allege a breach of this local Code.

### 3. Who does the Code apply to?

- 3.1 This Code applies to all members of the Council ***who intend to vote on a planning matter, that is:***

***Members of the Planning Development Control Committee (PDCC)***

***Members of the Cabinet when considering site or area specific policy issues***

***When planning applications or site or area specific policy issues are referred to full Council for decision, all members of the Council.***

It also applies to officers.

**3.2** *In fulfilling their role as champions of their local community, Councillors may be encouraged to engage in pre-application discussions on development proposals. This may involve attending public meetings. Under common law, members who express any view in discussions (beyond simply gathering information, listening to points of view, or asking questions) and then vote run a risk of being deemed to have predetermined the matter when it comes to PDCC, Cabinet, or Council. Members of PDCC (or Cabinet or full Council where the matter is ultimately to be decided by those bodies) therefore need to decide, before becoming involved in pre-application or pre-decision discussions:*

- a. whether they wish to preserve their right to vote, in which case they should not express any view, or*
- b. whether they wish to express a view and/or represent their community as advocate or opponent of any resulting proposal, in which case they will forego their right to vote on the matter.*

*Comment: Advice based on consensus arrived at during Probity and Planning Development Management Training Event held for members on 15 July 2009.*

**3.3** Anyone with any doubts about whether or how the Code applies to his/her own circumstances should seek advice early from the Monitoring Officer.

#### **4. Training**

**4.1** Planning Development Control Committee (PDCC) and Cabinet members will receive specialist training on planning law and procedures.

**4.2** Members must be able to commit to a minimum level of planning training before agreeing to serve on the PDCC.

**4.3** Attendance will be monitored and reported to the Standards Committee.

#### **5. Meetings – Personal and Prejudicial Interests**

**5.1** Members should not use, nor give grounds for suspicion that they have used, their position to further a private or personal interest rather than the general public interest.

**5.2** Members who have substantial property interests, or other interests that would regularly prevent them voting, should not serve on the PDCC.

**5.3** *PDCC members who are also Parish/Town Councillors should declare a personal interest in a planning application at the PDCC meeting if their Parish/Town Council has commented on the application. However, the interest will not be prejudicial solely because of the Parish/Town Council comment unless:*

- a. the Parish/Town Council is the applicant, or*
- b. the Parish/Town Council's financial position will be affected.*

**Members should also consider the guidance on pre-determination in section 9 of this Local Code before deciding whether to participate.**

*Comment: Standards Board (now Standards for England) guidance on dual-hatted members advises that Parish/Town Council members in this position have a personal interest. Although the 2007 Code of Conduct permits such members to declare an interest only when they speak, it is considered good practice, and less likely to lead to accidental failures to declare due to an oversight, for members to declare interests of this type at the outset and additionally when the item is called, even if they do not intend to speak. Declaring when the item is called also means that members of the public, who may not be present when interests are declared at the start of the meeting, will be aware of the situation.*

- 5.4 PDCC members who are also Parish/Town Councillors **need to carefully consider whether they should** participate in debates and vote on development proposals at Parish/Town Council meetings and still participate fully at PDCC. **If they wish to do so**, at Parish/Town Council meetings they should make it clear, and ask to have minuted, that the views then expressed are based on the information before them at the time, and might change in the light of further information and/or debate at the PDCC meeting.

*Comment: wording slightly strengthened to ensure members in this situation are cautious to avoid giving any impression of pre-determination or bias*

## **6. Gifts and Hospitality - Personal and Prejudicial Interests**

- 6.1 **Under the Code of Conduct, members have a personal interest in matters coming before the Council that relate to or are likely to affect someone who has provided them with gifts or hospitality worth £25 or more.** (*Comment: revised 2007 Code of Conduct*). Members involved in deciding planning applications should abide by the following additional rules.
- 6.2 It is advisable to refuse all gifts, however low in value, if there is any reason to suspect the person offering them is or may become a planning applicant.
- 6.3 If a gift is accepted, its receipt should be registered however low its value.
- 6.4 If receipt of a degree of hospitality is unavoidable, members should ensure it is of a minimum and its receipt is registered.
- 6.5 Members should consider whether it would be appropriate in a particular case to notify the Monitoring Officer when gifts or hospitality have been offered, but refused.
- 6.6 Members should regard themselves as having a prejudicial interest in a planning application submitted by or on behalf of someone from whom they have received a gift or hospitality, even one of relatively low value.

## **7. Acting as agent**

- 7.1 Members should never act as agents for individuals or bodies pursuing planning applications.

## 8. Proposals for Council's Own Development/Development on Council Land

8.1 It is important that such proposals are dealt with, and seen to be dealt with, on an equal footing with other applications.

8.2 Decisions must be taken strictly on the planning merits and without regard to any financial or other gain that may accrue to the Council.

**8.3 *Where the Council is the landowner or applicant for development, any member who has been involved in preparing or advocating the proposal will be perceived as having fettered their discretion, and should not take part in its determination. (See the section on predetermination and bias below). However, a member in this situation can make a public statement at Committee as set out in paragraph 11.1. (Comment: ACSes Model Code).***

## 9. Predetermination and bias

9.1 Planning matters should be processed in a fair and open manner. Members making the decision must take account of all the evidence presented. Committing themselves one way or the other before hearing all the arguments makes them vulnerable to an accusation of bias, and may amount to maladministration.

9.2 Predisposition – where members have formed a preliminary idea about how they are likely to vote - is acceptable, providing members have an open mind as to the merits of the arguments, and only reach a final decision at the meeting after duly considering all the available information.

9.3 In particular, members involved in decision-making must not:

- a. organise support for or opposition to a proposal;
- b. lobby other members;
- c. act as an advocate;
- d. seek to interfere with the impartiality of an officer's report, or put pressure on officers for a particular recommendation;
- e. declare their voting intention before a meeting at which the matter is to be discussed;
- f. indicate, or give the impression of, support for or opposition to a proposal in a manner suggesting they have a closed mind to any views or further information which may be available;
- g. follow the lead of another member when voting, rather than reach an independent conclusion based on consideration of all the evidence. For example, a decision should not be based on the views of the Executive or a member of the Executive, or of a political group meeting.

9.4 Complying with the additional guidance in this Local Code on pre-decision discussions (paragraph 3.2), lobbying (paragraph 10.1), and the conduct of public meetings (paragraph 14.1 to 14.6) should enable members involved in decision-making to be seen to act impartially.

## 10. Lobbying

- 10.1 While it is inevitable that members will be subject to lobbying, where it occurs they should:
- a. simply listen to points of view;
  - b. explain that, whilst they can listen to what is said, it prejudices their impartiality to express a firm point of view or an intention to vote one way or another;
  - c. refer an applicant who requests planning or procedural advice to officers;
  - d. report any undue or excessive lobbying to the Monitoring Officer.

## 11. Procedure where a member has committed him/herself (predetermination)

- 11.1 If members do commit themselves to a particular view on a planning issue before a formal decision is reached, or feel that the public would reasonably believe they had done so, **they should move to a designated area of the meeting room set aside for members who do not intend to vote, declare their position and explain that they will not be voting. They may then make a statement and answer any questions, and may remain in the meeting for the duration of the business. As well as not voting, they should not move or second any recommendation.**

*Comment: Based on consensus arrived at during Probity and Planning Development Management Training Event held for members on 15 July 2009.*

- 11.2 If any member does not follow the Monitoring Officer's advice where the Monitoring Officer believes the member to have, or appear to have, predetermined the issue, the Monitoring Officer will consider referring the matter to the Standards Committee.

## 12. Applications relating to property in which a member has an interest under the Code of Conduct

- 12.1 Members should inform the Monitoring Officer if a planning application is submitted relating to property in which they have a personal interest. They should not assume that officers will otherwise be aware of this.
- 12.2 Members should not take any part in the decision-making on an application relating to property in which they have a personal interest. **Such an interest will almost inevitably also be a prejudicial interest.** They will however have the right to make a written submission to explain and justify the proposal to an officer in advance of the PDCC meeting, just as has any member of the public. **They are also entitled under the Code of Conduct to address the PDCC as a public participant under the rules applying to public participation, providing they leave the meeting on completing their statement and answering any questions.** (Comment: 2007 Code of Conduct). **They should do this from the area used by the public for making representations, not from a position amongst Committee members.** (Comment: ACSeS Model Code).



### **13. Decisions Contrary to Officer Recommendation**

- 13.1 The reasons for all decisions should be clear, convincing, and supported by planning evidence.
- 13.2 Where a decision is made to refuse an application against officer advice, or impose additional conditions on a permission, the reasons must be clearly stated when the proposition is moved.
- 13.3 Officers must be given the opportunity to explain the implications of a contrary decision before a vote is taken.

### **14. Conduct of Meetings**

- 14.1 Members will conduct the business of the PDCC in a fair and sensitive manner, conscious of the public arena in which they are appearing.
- 14.2 Members and officers will address one another during the debate in a proper manner and will not refer to one another by first names.
- 14.3 Discussions about applications, as well as decisions, should be confined to the planning merits.
- 14.4 Senior Legal and Planning Officers will attend all PDCC meetings.
- 14.5 *PDCC members should not communicate with members of the public (either orally or in writing) during the Committee's proceedings. This could give the appearance of bias.***
- 14.6 *PDCC members should not vote on a planning application unless they have been present for the entire debate, including any introduction by officers and representations from the public.***

*Comment: ACSeS Model Code*

### **15. Appeals against Planning Decisions**

- 15.1 Before deciding whether to make representations on an appeal, members should remember that their overriding duty as a Councillor is to the whole local community.
- 15.2 Members wishing to make representations on an appeal should give written notice to the Monitoring Officer and the appellant. Where the appeal is to be dealt with at an enquiry, this notice should be given at least 5 working days before the start of the inquiry.

### **16. Site Visits**

- 16.1. The PDCC has agreed criteria for deciding when it is appropriate to hold a site visit. These, and administrative considerations arising from them, are set out at Annex 1.
- 16.2 Applicants and objectors may not address members at site visits.

- 16.3 Members may familiarise themselves with a site informally, before the application is debated at PDCC. When doing so, members should remember that:
- a. the Code of Conduct, and this local Code, applies to them at such times;
  - b. they should not become involved in any conversation with the public during such a visit;
  - c. they have no legal right to enter private land without the owner's or occupier's permission.

## **17. Review of Decisions**

- 17.1 The Head of Planning and Transportation will monitor PDCC decisions continuously, and if concerns arise about decisions made contrary to officer recommendations these will be reported to the Committee.
- 17.2 The PDCC will monitor the quality of its decisions through an annual tour of sites.

## **PROVISIONS RELATING SPECIFICALLY TO OFFICERS**

### **18. All Officers**

- 18.1 The onus is on officers to inform their Head of Service if a planning application is submitted relating to a property in which they have an interest. The Employee Handbook contains instructions on how to do this. The officer should not assume that planning officers will otherwise be aware of this.
- 18.2 Proposals submitted by or on behalf of officers will be determined by the PDCC. Officers will have the same rights as a member of the public to explain and justify their proposal to a planning officer before it is referred to the Committee.

### **19. Planning Officers**

- 19.1 Officers must always act impartially.
- 19.2 Officers involved in processing and determining planning matters must act in accordance with the Royal Town Planning Institute's Code of Professional Conduct.
- 19.3 The Code of Conduct for Employees contains general rules on the acceptance of gifts and hospitality. Officers involved in planning should also consider whether it would be appropriate in a particular case to notify instances where gifts or hospitality have been offered, but refused.
- 19.4 Officers should never act as agent for an individual or body pursuing a planning application.
- 19.5 In any discussion on planning issues, officers will always make it clear at the outset that any views they express are based on their provisional professional judgement and do not commit the Council to any particular decision.

- 19.6 Advice given will be consistent and based upon material planning considerations. Every effort will be made to ensure that there are no significant differences in interpretation of planning policies between officers.
- 19.7 Where officers consider it appropriate, a written note of discussions will be made, and/or a follow up letter sent explaining the conclusions of the discussion. Two or more officers will attend potentially contentious meetings.
- 19.8 Reports to PDCC must be accurate and cover all relevant points, including the substance of any objections and the views of those consulted.
- 19.9 All reports will have a written recommendation of action/decision, and oral reporting (other than to update an existing report) will only be used on rare occasions and carefully minuted when this does occur.
- 19.10 All reports will contain a technical appraisal that clearly justifies the stated recommendation.
- 19.11 All reasons for refusal, and conditions to be attached to permissions, must be clear and unambiguous.
- 19.12 If a departure from the development plan is recommended, the material considerations justifying the departure must be clearly stated.
- 19.13 Every planning application file will contain an accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 19.14 Monitoring of record keeping will be undertaken on a continuous basis by Managers in Planning Services.

**SITE VISITS**

The agreed criteria for deciding when it is appropriate to hold a site visit are:

- a. where the proposal raises significant policy issues which cannot be readily understood without seeing the context of the site; or
- b. where the proposal is being considered under an exceptions policy and has a particular degree of sensitivity; or
- c. major developments which would have a significant environmental impact where the wider context of the proposal is important; or
- d. unusual or unconventional proposals where the context of the site is relevant to the determination of the proposals.

Even if one or more of the above criteria is met, a site visit shall only be held if the majority of Committee members indicate that they will attend on the appropriate day.

The purpose of a site visit is for members to gain knowledge of the proposal, the site, and its relationship to adjacent sites. It is not a formally convened meeting open to the public.

Applicants and objectors may not address members at site visits.

Officers will prepare a report including any relevant information obtained from the site visit to enable the Committee to decide the application.

The Monitoring Officer will ensure all correspondence about site visits clearly identifies its purpose, format, and conduct. Written procedures on this shall be maintained and communicated to all parties.