

## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Standards Committee **Date:** 14 July 2009

**Place:** Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 9.20 pm

**Members Present:** Ms M Marshall (Independent Member) (Chairman), Councillor B Surtees (Parish or Town Council Representative), Councillor Mrs D Borton (Parish or Town Council Representative), Councillor B Rolfe (EFDC Appointee), Councillor J Salter (Parish or Town Council Representative), Councillor Mrs P Smith (EFDC Appointee), G Weltch (Independent Member) and Councillor Mrs J H Whitehouse (EFDC Appointee)

**Other Councillors:** Mrs A Cooper

**Apologies:** M Wright

**Officers Present:** C O'Boyle (Monitoring Officer), I Willett (Deputy Monitoring Officer), G Lunnun (Allegations Determination Manager) and S G Hill (Local Assessments Manager)

### **1. WELCOME**

The Chairman welcomed Councillor Mrs J H Whitehouse on her return to the Committee.

### **2. MINUTES**

#### **RESOLVED:**

That the minutes of the meeting of the Committee held on 14 April 2009 be taken as read and signed by the Chairman as a correct record.

### **3. MATTERS ARISING FROM THE MINUTES OF THE LAST MEETING**

#### **(a) Members' Training (Minute 33(a))**

The Committee noted that approximately 10 members had attended the training course on 26 May 2009 regarding the process for dealing with complaints against councillors about alleged breaches of the Code of Conduct. Councillor Surtees advised that he had been informed that a complex subject had been presented in an informative and useful way.

### **4. DECLARATIONS OF INTEREST**

No declarations of interest were made pursuant to the Council's Code of Conduct for Members.

## 5. PLANNING PROTOCOL - REVIEW

The Deputy Monitoring Officer reported on responses following consultation with District Councillors, Parish and Town Councils, Planning Agents and the Director of Planning and Economic Development on the need to review the Planning Protocol.

### (a) Cabinet Members – Conflict of Interest in Planning Matters

In relation to Paragraph 7.2 of the Protocol, attention had been drawn to two issues. The District Council Housing Portfolio Holder had questioned the need to declare a prejudicial interest in a planning matter in relation to a scheme which had been approved before he had become the Portfolio Holder. Officers had drawn attention to the review of Cabinet Portfolios for 2009/2010 as a result of which it was possible a number of different Portfolio Holders could be involved in the formulation of a proposal requiring planning permission.

The Deputy Monitoring Officer drew attention to possible rewording requiring that a prejudicial interest should only apply if the member had been the appropriate Cabinet Member at the time the proposal had been agreed with references to Portfolio Holders in the plural in order to reflect the possible overlap of responsibilities.

Members discussed whether the interest could be affected by a time lapse between the two situations and whether by taking on the responsibility of a Portfolio the member became committed to a project even if not a party to the original decision.

### (b) Property Interests

The Deputy Monitoring Officer reported that the interpretation of Section 8 had been cited in a recent complaint about an alleged breach of the Code of Conduct. He advised that the adjudication on that allegation had not yet been completed and suggested this part of the Protocol be reviewed in the light of the outcome.

### (c) Prejudicial Interests and the Councillor's Representative Role

The Deputy Monitoring Officer drew attention to a query as to how to deal with a situation where more than one councillor sought to exercise their right under the Code of Conduct to address a Planning Committee on a matter in which they had a prejudicial interest.

The Committee considered possible revised wording for the Protocol providing for Councillors to be called in alphabetical order by surname with each member leaving the meeting on completion of their statement. Some members suggested that the order of speaking should be at the Chairman's discretion. The Committee agreed that such members should only be present in the meeting whilst making their representations otherwise those following the first speaker would have an advantage having heard earlier representations.

At this point in the meeting Councillor Mrs Cooper sought to speak as a non member of the Committee. The Chairman, having regard to the length of the agenda and the likelihood of all councillors being able to make further representations on the review of the Planning Protocol as it appeared it would not be completed at this meeting, advised that she was restricting the discussion to members of the Committee only.

**(d) Training Requirements**

In response to the consultation one firm of chartered town planners and design consultants had expressed the view that some members appeared not to have the basic knowledge of planning law to be able to determine applications on planning grounds. The Committee considered the poor level of attendance of both District and Town and Parish Town Councillors at Planning training courses and steps which could be taken to improve the situation. Members suggested that training sessions should be carried out immediately before or immediately after meetings of the District Council's Area Plans Sub-Committees and the District Development Control Committee as this would achieve better attendance. Reference was also made to the ability of members to gain knowledge from the Planning Portal.

**(e) Section 106 Agreements**

The Committee was advised that a District Councillor had drawn attention to the lack of any reference to Section 106 Agreements in the Planning Protocol.

The Deputy Monitoring Officer reported on possible wording suggesting that care should be exercised about the way in which members discussed the question of providing ancillary community benefits through Section 106 Agreements. The Committee agreed that an appropriate paragraph should be included within the Planning Protocol.

**(f) Local Government Association Advice – Probity in Planning**

The Deputy Monitoring Officer drew attention to the LGA publication and suggested that the Planning Protocol would benefit from incorporating advice from this document including clarification of predetermination, predisposition or bias; action to be taken by Cabinet Members; pre-application discussions; public speaking; and Planning Officers' advice. He also advised that he proposed to speak to the Director of Planning and Economic Development about the Codes of Professional Conduct for Planning Officers which was mentioned in the LGA Publication.

**(g) Loughton Town Council**

The Deputy Monitoring Officer reported that Loughton Town Council had suggested that the review of the Planning Protocol should be finalised after the new Code of Conduct had come into force.

**(h) Planning Services Scrutiny Panel**

The Deputy Monitoring Officer drew attention to issues raised by the Scrutiny Panel which would also need to be taken into account in the current review.

**RESOLVED:**

- (1) That the officers revise the Planning Protocol in the light of the issues raised in the consultation exercise, the discussions at this meeting and the issues raised by the Scrutiny Panel;
- (2) That a draft of the revised Protocol be circulated to members of the Committee, District Councillors and Parish/Town Councils for comment in advance of being submitted to a future meeting for consideration;

- (3) That the revised Planning Protocol be finalised after the new Code of Conduct has come into force.

**6. STANDARDS BOARD FOR ENGLAND - ATTITUDE SURVEY AMONG ELECTED MEMBERS**

The Committee noted the results of the survey of Councillors and Council Officers in relation to the Members' Code of Conduct. The survey showed that support for the Code of Conduct and the Local Standards Framework was at a high level.

**7. ALLEGATIONS MADE AGAINST THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS**

The Committee noted the current position of allegations made about District and Parish/Town Councillors.

**8. LOCAL COMPLAINT ASSESSMENT AND ADJUDICATION PROCESS - REVIEW**

The Committee considered a report reviewing the Council's Complaints/Local Assessment Process in the light of experience gained since its introduction.

**(a) Officer Roles/Mediation or Conciliation**

In relation to officer roles a member suggested that more emphasis should be placed on advising complainants of other avenues available to resolve an issue bearing in mind the resources required to follow the formal complaints process. The Local Assessments Manager advised that when preliminary discussions were held with a potential complainant all the avenues were explained. However, some complaints only became known on the receipt of a completed form at which stage it was not possible to suggest alternative action.

The Deputy Monitoring Officer drew attention to a report to be made to the Local Councils' Liaison Committee drawing attention to conclusions in the Standards Committee's Annual Report in relation to the number of complaints about Parish/Town Councillors, the vast majority of which had been made by one councillor against another.

The Committee agreed that complaints against councillors by other councillors could be a symptom of other problems and that the challenge was to find the correct way of resolving difficulties within Parish and Town Councils. It was suggested that the Essex and National Associations of Local Councils could intervene with training or conciliation.

**(c) Initial Assessments**

The Committee considered a number of concerns raised by one of their members about the assessment process. The member had questioned the policy to be adopted when a councillor who had been notified that they were the subject of a complaint approached a member of the Standards Committee for advice. Also the practice adopted in a Parish Council of publicly announcing that a complaint had been made.

The officers advised that it was a requirement that Standards Committee members should not advise councillors outside of the formal process as they might have to assess the complaint. Members were advised that Parish/Town Council Clerks were notified when a Parish/Town councillor was subject to a complaint but that this

notification was not for public disclosure for fear of prejudicing the assessment of the complaint. The Committee discussed the timescale for notifying a parish or town council clerk and the subject member of a complaint. The Monitoring Officer agreed to strengthen the Procedure Notes with a view to ensuring that there was no public disclosure of complaints during the assessment/review processes.

The Committee also discussed the initial notification of a complaint to the subject member and the fact that no detail was given of the complaint, this being disclosed only when an investigation had been commissioned.

The Monitoring Officer explained that details of a complaint were not disclosed at the assessment/review stages because there was a need to maintain confidentiality so that an investigation, if required, was not compromised.

#### **(d) Assessment/Review Hearings**

The Committee was advised that one subject member had complained that they had been denied access to Assessment and Review Sub-Committee hearings and that this was against natural justice in that they had not been able to reply to the allegation.

The Monitoring Officer pointed out that Standards Board advice indicated that Assessment and Review hearings should be held in private. The reason was that these stages in the process were designed to assess a complaint at face value and whether there was a potential breach of the Code, not to carry out an investigation. Furthermore it should be borne in mind that potentially unfounded and damaging allegations would be considered and should not be disclosed unless properly investigated for adjudication purposes.

#### **(e) Complaint Investigations – Office Holders**

The Committee was advised that Standards Board advice allowed a complaint to be referred if it was considered local investigation would not be effective because of the position held by a subject member, e.g. Leader, Cabinet Member, Standards Committee Member. The Monitoring Officer suggested that advice to complainants on this aspect needed to be reinforced and that the policy should be one of considering each case on its merits with the arguments for referral to the Standards Board being set out on the agenda for Assessment Sub-Committee meetings.

#### **(f) Grounds for Referral for Investigation**

The Committee agreed with the suggestion that, in advice to complainants and to the Assessment Sub-Committee, complaints should be based on no more than one alleged breach of the Code wherever possible.

#### **(g) Standard Letters**

The Committee noted that action would be taken to strengthen the standard letters of the Standards Board in relation to the invitation to comment on draft investigation reports. In future strict timescales would be imposed and once the specified period had elapsed, a report would be finalised.

**RESOLVED:**

That the suggestions contained in the report and the views of the Committee expressed at this meeting be incorporated into revised Procedure Notes for Officers.

**9. DISPENSATIONS**

The Committee noted that the Standards Committee (Further Provisions) (England) Order 2009 made changes to the criteria for granting dispensations for members to speak and vote when they had a prejudicial interest. The Committee noted the changes and the new guidance issued by the Standards Board to reflect the new regulations.

**RESOLVED:**

(1) That the Standards Board Guidance be issued to District Councillors through the Council Bulletin and that copies of the Guidance be sent to Parish and Town Council Clerks; and

(2) That reference to dispensations be made in the revised Planning Protocol.

**10. DATES OF FUTURE MEETINGS**

The Committee noted that the calendar for 2009/2010 provided for meetings of the Committee held on 13 October 2009, 19 January 2010 and 13 April 2010.

**CHAIRMAN**