



Epping Forest District Council

STANDARDS COMMITTEE **Tuesday, 14th July, 2009**

Place: Civic Offices, High Street, Epping
Room: Committee Room 1
Time: 7.30 pm
Committee Secretary: G Lunnun - The Office of the Chief Executive
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Ms M Marshall (Chairman), Councillor B Rolfe, Councillor Mrs P Smith, G Weltch, M Wright and Councillor Mrs J H Whitehouse

Parish/Town Council Representatives:

Councillors Mrs D Borton, J Salter, B Surtees

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 8)

To approve as a correct record the minutes of the meeting held on 14.April 2009 (attached).

3. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

4. PLANNING PROTOCOL - REVIEW (Pages 9 - 42)

(Monitoring Officer) To consider a report on consultation concerning the review of the Planning Protocol.

5. STANDARDS BOARD FOR ENGLAND - ATTITUDE SURVEY AMONG ELECTED MEMBERS (Pages 43 - 46)

To note the enclosed press release.

6. ALLEGATIONS AGAINST COUNCILLORS (Pages 47 - 48)

To consider the attached schedule showing the current position.

7. LOCAL COMPLAINT ASSESSMENT AND ADJUDICATION PROCESS - REVIEW (Pages 49 - 56)

(Monitoring Officer) To consider a report.

8. DISPENSATIONS (Pages 57 - 66)

(Monitoring Officer) To consider the attached report and guidance.

9. DATES OF FUTURE MEETINGS

(Monitoring Officer) The calendar for 2009/10 provides for meetings of the Committee on 13 October 2009, 19 January 2010, 13 April 2010.

Additional meetings can be arranged as and when required by the Committee.

10. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
Nil	Nil	Nil

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

Agenda Item No	Subject
Nil	Nil

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Standards Committee **Date:** 14 April 2009

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 7.30 - 7.50 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 S Murray (Epping Forest District Council Appointee), Councillor B Rolfe (Epping Forest Council Appointee), Councillor J Salter (Parish or Town Council Representative), Councillor Mrs P Smith (Epping Forest Council Appointee) and G Weltch (Independent Member)

Other Councillors:

Apologies: M Wright (Independent Member)

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

25. MINUTES

RESOLVED:

That the minutes of the meeting of the Committee held on 27 January 2009 be taken as read and signed by the Chairman as a correct record subject to the inclusion of the name of Councillor B Surtees in the list of apologies for absence.

26. DECLARATIONS OF INTEREST

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

27. THE STANDARDS COMMITTEE (FURTHER PROVISIONS) REGULATIONS 2009

The Deputy Monitoring Officer reported that draft regulations were being prepared which would allow the Standards Board to suspend the initial assessment functions of an authority and would enable authorities to establish Joint Standards Committees. They would also amend the powers of Standards Committees to grant dispensations to members who would otherwise be unable to take part in authority business because of a prejudicial interest. The Committee noted that the regulations were expected to come into force in May 2009.

Members noted that the circumstances in which the Standards Board would intervene were likely to include an authority's failure to comply with Standards Board guidance or directions, or where the Standards Committee or Monitoring Officer failed to carry out their functions properly. It would also be open to an authority to

ask the Board to intervene. Members noted that in the event of the Board making a direction the authority had to publish details of it in the local newspaper and any other publication the Board thought was appropriate.

Members were advised that Joint Standards Committees would be able to deal with all or any functions of a Standards Committee but there could be no concurrent functions. Finances were to be shared as agreed by the authorities and in default of agreement by an arbiter appointed by them. The Deputy Monitoring Officer reported that the Standards Board would be producing guidance including a draft constitution or terms of reference.

The Committee were advised in relation to dispensations that a new provision would clarify the ability of members to seek a dispensation where the political balance of a meeting would be upset sufficiently to prejudice the outcome of voting on the issue.

RESOLVED:

That the issues to be covered by the regulations be noted.

28. STANDARDS BOARD ANNUAL RETURNS

The Deputy Monitoring Officer reported that from April 2009, the Standards Board would be collecting information from Standards Committees in the form of an annual return. The information required would be on the arrangements for supporting the ethical conduct and questions would be asked about protocols for member/officer relations; the existence of mechanisms for dealing with member/member and member/officer disputes; the Chairman of the Committee relationship with the Chief Executive, Monitoring Officer and Council Leader; steps being taken to promote the Committee's work; and general activities of the Committee including training.

Members were advised that the annual return would take the form of an on-line questionnaire, similar to the quarterly returns.

RESOLVED:

That the introduction of Standards Board annual returns be noted.

29. ANNUAL ASSEMBLY OF STANDARDS COMMITTEES - 2009

The Committee considered an outline of issues to be considered at the Standards Board's Annual Assembly being held on 12 and 13 October 2009 at the ICC, Birmingham.

RESOLVED:

That having regard to the restricted budget available to the Committee no representatives be appointed to attend the annual assembly.

30. BIAS AND THE CODE OF CONDUCT - HIGH COURT DECISION

The Committee received a report of the Monitoring Officer on the case of R (on the application of Michael Gardner) (Claimant) v Harrogate Borough Council

(Defendant) and Mr and Mrs Atkinson (Interested Party) (2008). Members were reminded that an oral report had been made on this case at the last meeting when it had been decided that the comments about the definition of close associate/friend should be taken into account in the current review of the Planning Protocol.

RESOLVED:

That the report be noted.

31. ALLEGATIONS MADE ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS

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

In relation to references EFDC 1/2008 and EFDC 3/2008, the Hearings Sub-Committee on 31 March 2009 had found on the evidence that the member had not failed to follow the Code of Conduct.

In relation to reference EFDC 4/2008 the Assessments Sub-Committee on 3 April 2009 had decided that the case should be referred for consideration at a hearing. Pre-inquiry work was currently being undertaken and the case would go before the Hearings Sub-Committee in due course.

In relation to reference EFDC 1/2009 an external investigator had been appointed in relation to the complaint against one councillor which had been referred for investigation by the Assessments Sub-Committee.

In relation to reference EFDC 2/2009 the Standards Board had decided to take no action on the matter.

In relation to reference EFDC 4/2009 the complainant had requested a review of the decision of the Assessments Sub-Committee to take no action. Arrangements were being made to hold a meeting of the Reviews Sub-Committee.

In relation to reference EFDC 5/2009 the Assessments Sub-Committee had decided to take no action.

32. DATES OF FUTURE MEETINGS

The Committee noted that the calendar for 2009/10 provided for meetings of the Committee to be held on 14 July 2009, 13 October 2009, 19 January 2010 and 13 April 2010.

33. ANY OTHER BUSINESS

(a) Members' Training

The Committee noted that a members' training course was to be held on 26 May 2009 regarding the process for dealing with complaints against councillors about alleged breaches of the Code of Conduct. The course would provide a briefing on the various stages of the complaints process including advice to potential complainants from officers, assessment of complaints, reviews against decisions not to investigate complaints, investigations and adjudications.

The Deputy Monitoring Officer reported that in addition, courses would be held later in the municipal year on the revised Code of Conduct and the revised Planning Protocol.

CHAIRMAN

Report to the Standards Committee

Date of meeting: 14 July 2009



**Epping Forest
District Council**

Subject: Planning Protocol - Review

Officer contact for further information: Ian Willett - Deputy Monitoring Officer

Recommendations:

- (1) To consider responses to consultation on the Planning Protocol including the following:**
 - (a) paragraph 7.2 (Portfolio Holders);**
 - (b) paragraph 8.1 (councillors with property interests);**
 - (c) training; and**
 - (2) That consideration be given to the representations from Loughton Town Council concerning whether the Planning Protocol should be finalized after the new Code of Conduct has come in to force and the additional paragraphs 2.5 - 2.6 and Section 4 of the report have been considered.**
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1. Introduction

- 1.1 At its meeting on 27 January 2009, the Committee requested that consultation be carried out with the parish and town councils, planning agents and the Director of Planning and Economic Development concerning the need to review the Planning Protocol. Reference was also made at that meeting to two matters which had been raised regarding the Protocol, namely:
 - (a) Section 8 (Property Interests); and
 - (b) Section 22 (development proposals submitted by councillors and officers or where there are objectors)
- 1.2 The consultation has now been concluded. Only one parish council (Loughton Town Council) and one planning agent responded to the consultation. Separately, one Cabinet member has raised the issue of declaration of interests where a Cabinet member has previously been involved in preparations for submitting an application for planning consent.
- 1.3 These matters are discussed in this report.

2. Consultation Responses

(a) Paragraph 7.2 (Cabinet Members – Conflicts of Interest on Planning Matters)

2.1 This paragraph deals with the position of Cabinet members in the planning process. The Protocol identifies a conflict of interest for a Cabinet member who has been instrumental in bringing a scheme to a position where it requires planning approval as part of their portfolio responsibilities. There are two issues which have arisen since this section of the protocol was last reviewed:

(i) Where there has been a Change in Portfolio Holder

2.2 Councillor D Stallan, the Portfolio Holder for Housing, was obliged to declare a prejudicial interest in a planning matter which had been approved before he became the portfolio holder. It is suggested that the requirement to declare a prejudicial interest should only apply if the member was the Cabinet member at the time the proposal was agreed.

(ii) Portfolio Holder Responsibilities

2.3 In the recent review of Cabinet portfolios for 2009/10, the number of Cabinet members was reduced by one to a total of eight. The former Planning and Economic Development Portfolio was discontinued and its functions distributed among number other Cabinet portfolios. In view of this Section 7 of the Protocol may need to be amended to reflect that a number of different portfolio holders could be involved in the formulation of a proposal requiring planning consent.

Proposal

2.4 If the Committee supports the need to change this section of the Protocol, it is suggested that paragraph 7.2 and 7.3 could be amended to read as follows:

" Any members of the Cabinet who are responsible for bringing forward planning proposals as part of their portfolio holder responsibilities (or have otherwise been involved in such proposals within the Cabinet) and which are subsequently considered by an Area Plans Sub-Committee, the District Development Control Committee or the Council for the purpose of granting planning consent, should be aware of the conflicts of interests which may exist and should declare a prejudicial interest and not speak or vote on that matter at any of those planning bodies.

Any planning matter dealt with by a Cabinet member as part of their portfolio holder responsibilities but who is no longer a member of the Cabinet shall not constitute a prejudicial interest for the successor Cabinet member unless any other circumstances indicate to them that a prejudicial interest exists."

(b) Section 8 (Property Interests)

2.5 This section requires councillors who are involved professionally or through their employment in property or development matters to exercise care over declaration of their interests in the planning field.

2.6 The interpretation of this section of the Protocol has been cited in a recent complaint about a breach of the Code of Conduct and if further consideration of this section is

required a separate report will be once the investigation and adjudication have been completed.

(c) Section 23 (Prejudicial Interests and the Council's Representative Role)

- 2.7 At the January 2009 meeting it was queried how a Council should 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 have a prejudicial interest. The procedure for this is set out in paragraphs 23.2 and 23.3 of the Protocol. The Protocol is currently drafted on the basis that only one member will be exercising their right to address the committee and then leave the meeting. However, if there are more than one the question of the order in which they speak is relevant
- 2.8 The relevant councillors might be called in (a) alphabetical order, or (b) in date order according to when they requested the opportunity to address the committee concerned; or (c) at the Chairman's discretion. Whichever method is preferred, the members should make their representations in turn and then each leaves the meeting when they have finished.

Proposal

- 2.9 If the Committee accepts that Section 23 should be altered to cover this situation, it is suggested that a new paragraph (to be numbered 23.5) should be added as follows:

"If more than one Councillor declares a prejudicial interest and wishes to address the Committee before leaving the meeting, the Chairman of the meeting shall call them to make their representations in alphabetical order by surname. Each member shall immediately leave the meeting on completion of their statement. No other representations from a member of the public or other interested party shall be made until all members with prejudicial interests have completed their statements and left the meeting."

(d) Section 4 (Training Requirements)

- 2.10 One firm of chartered town planners and design consultants made comments regarding the level of training and expertise among new and established councillors. The company expressed the view that some members appeared not to have the basic knowledge of planning law to determine applications on planning grounds. Particular reference was made to the new "permitted development" rules under the planning act.
- 2.11 The Committee will know that during the year, in addition to training on the Planning Protocol, there are usually three or more training courses on planning matters. An initial course is tailored to new members although it is recommended to existing members as a refresher session whilst other training courses deal with specific current issues or take a particular theme in planning law and for exploration in greater detail. The particular point raised by the consultants regarding permitted development has been taken up and included in two training courses for members later in the year.
- 2.12 The question of member attendance of training and planning continues to be a matter of concern. There have been discussions among group leaders and others about how to ensure that members attend training courses in planning and constantly keep their knowledge and expertise up-to-date.

Proposal

The Standards Committee may like to consider the general question of training and planning for elected members and consider what could be done to promote higher levels of attendance. It is hoped that at the meeting there will be statistics available on attendance at planning courses over the last two years.

(e) Section 106 Agreements

- 2.13 One District Councillor has commented that the Planning Protocol does not deal with the question of Section 106 agreements which are sometimes negotiated as adjuncts to planning consents. Typically they might involve financial payments or payments in kind to the Council by applicants for ancillary works in the form of community benefits related to the scheme being proposed for consent. This could involve infrastructure improvements in the local area (e.g. traffic schemes and road improvements) or contributions to affordable housing provision within the district.
- 2.14 The point being made is that discussions of this type in public session could give an unfortunate impression to the public of how planning consents are given. At worst this impression could be that consents are being “bought” or “sold”. It should be stated that there is nothing unlawful about the section 106 process but the Protocol could usefully say that discussion of such financial arrangements should be carefully managed to avoid an incorrect impression of the Council’s role as Planning Authority being given.

Proposal

That a new section be added to the Planning Protocol as follows:

“ Councillors should always exercise care about the way in which they discuss the question of providing ancillary community benefits through section 106 agreements, particularly where funding is being sought the Council as part of determining planning applications. At no time should the impression be given that planning considerations are secondary to financial contributions. The impression that planning consents are being bought or sold should at all times be avoided. Negotiations regarding such agreements should be dealt with by officers with appropriate financial and legal advice and be the subject of formal reports.”

3. Loughton Town council Comments

- 3.1 Loughton Town Council had no adverse comments to make on the Planning Protocol but felt that the final publication of a revised protocol should await the publication of the new Local Government Code of Conduct by the Government. It is true that any revisions to the Code of Conduct will affect the contents of the Protocol so if the Committee wishes to proceed with revising the Code at this stage it may be as well in issuing this document to include a caveat that the Protocol is likely to be subject to change in the future.

4 Local Government Association (LGA) - Advice

- 4.1 The attached guidance document has been received from the LGA and covers similar ground to the Protocol. The Committee may wish to consider any aspects of the

advice that should be examined in greater detail.

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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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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.

- 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.


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

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

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

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

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



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

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

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

development proposals submitted by councillors and officers; and council development

- 5.1 Proposals to their own authority by serving and former councillors, officers and their close associates and relatives can easily give rise to suspicions of impropriety. So can proposals for a council's own development. Proposals can take the form of either planning applications or development plan proposals.
- 5.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism. Any local planning protocol or code of good practice should address the following points in relation to proposals submitted by councillors and planning officers:
- serving councillors who act as agents for people pursuing planning matters within their authority should not play a part in the decision-making process for those proposals. Similarly, if they submit their own proposal to their authority they should play no part in its decision making;
 - a system should be devised to identify such proposals;
 - the council's monitoring officer should be informed of such proposals;
 - proposals should be reported to the planning committee as main items and not dealt with by officers under delegated powers.
- 5.3 The consideration of a proposal from a councillor in such circumstances would be considered as a prejudicial interest under the code and as such, the councillor would be required to withdraw from any consideration of the matter. The code also provides that the councillor should 'not seek improperly to influence a decision about the matter'. It is important to emphasise here that 'improperly' does not imply that a councillor should have any fewer rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a committee.
- However, whilst a member with a prejudicial interest may now address the committee under the code if the public enjoy the same rights, the member should consider whether it would be wise to do so in all the circumstances of the case, which could include the nature of the prejudicial interest and the relationship of the councillor with the remainder of the planning committee.
- 5.4 Proposals for a council's own development should be treated with the same transparency and impartiality as those of private developers . A member whose cabinet/executive responsibility effectively makes them an advocate for the development in question almost represents the 'internal applicant'. In such circumstances, the appropriate approach is likely to be that the member is able to argue for the development but should not vote on the relevant applications.

lobbying of and by councillors

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

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

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

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

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

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

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

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

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

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

pre-application discussions

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

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

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

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

- 7.6 Consideration needs to be given to when to involve other consultees and the community in pre-application discussions. Some authorities have been very successful in engaging their councillors and communities by having public planning forums to explore major pre-application proposals with the developer outlining their ideas and invited speakers to represent differing interests and consultees. The advantages of the authority setting up such forums are the transparency of process, and the ability of ward councillors and other councillors to seek information and identify important issues for the proposal to address, without the risk of planning councillors having engaged with developers in such a way as to suggest they have pre-determined themselves. Members should also be aware of the code of conduct which means that they should not use their position to improperly influence decisions. This provision does not only apply to councillors when they are in a committee meeting.
- 7.7 Authorities also have other mechanisms to involve councillors in pre-application discussions including:
- committee information reports by officers of discussions from which councillors can identify items of interest and seek further information and raise issues for consideration;
 - developer presentations to committees which have the advantage of transparency if held in public as a committee would normally be;
 - ward councillor briefing by officers of the content of initial pre application meetings held.
- 7.8 The 2007 CLG report on *Member Involvement in Planning Decisions*, the 2007 London Councils report on *Connecting Councillors with Strategic Planning Applications*, and the 2007 POS Enterprises Development Management practice guidance note on *Councillor involvement in pre-application discussions* provide examples and advice for those interested in developing appropriate protocols for their authority. Full references are given at the end of this document.
- 7.9 Statements of Community Involvement required as part of the LDF need to be reviewed to see whether mechanisms for such dialogue are already in place, or if the statement needs to be updated to reflect the council's approach.

officer reports to committee

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

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

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

public speaking at planning committees

9.1 The principle of whether or not public speaking should be allowed at a planning committee is very much a matter for the local authority concerned. A majority of authorities now provide such an opportunity. The benefits seen by those authorities are that public confidence is generally enhanced and that direct lobbying may as a result be reduced. The disadvantage is that the approach may lengthen meetings and make them marginally more difficult to manage. However, where public speaking is allowed, it is important that clear protocols are established about who is allowed to speak, including provisions for applicants, supporters, ward councillors, parish councils and third party objectors arrangements. In addition, in the interests of equity, the time allowed for presentations for and against the development should be identical, and those speaking should be asked to direct their presentation to reinforcing or amplifying representations already made to the council in writing.

9.2 Documents not previously submitted should not normally be circulated to the committee as all parties may not have time to react to the submissions, and councillors may not be able to give proper consideration to the matter. Officers may not be able to provide considered advice on any material considerations arising. This should also be told to those who intend to speak.

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

decision contrary to officer recommendation and/or the development plan

- 10.1 The law requires that decisions should be taken in accordance with the development plan, unless material considerations indicate otherwise (s38A Planning & Compensation Act 2004).
- 10.2 This gives rise to two main issues. Firstly, all applications which are not in accordance with the development plan must be identified and advertised as such. Secondly, if it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified, and how these considerations justify overriding the development plan must be clearly demonstrated. The application may then have to be referred to the relevant secretary of state, depending upon the type and scale of the development proposed. If the officers' report recommends approval of such a departure, the justification for this should be included, in full, in that report.
- 10.3 The Association of Council Secretaries and Solicitors' **Model Planning Code** advises planning committees to take the following steps prior to making a decision contrary to officers' recommendations:
- encouraging the formation of tentative reasons by discussing a predisposition with planning officers beforehand;
 - writing down the reasons as part of the mover's motion;
 - adjourning for a few minutes for those reasons to be discussed;
 - if a very strong objection from officers on validity of reasons, considering deferring to another meeting to have the putative reasons tested and discussed.

10.4 If the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain in full their reasons for not agreeing with the officer's recommendation. In so doing, members should observe the 'Wednesbury principle' (the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223) which, put simply, requires all relevant information (ie material considerations) to be taken into account and all irrelevant information (ie non-material matters) to be ignored.


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

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- 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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Local Government Association

The Local Government Association is the national voice for more than 400 local authorities in England and Wales. The LGA group comprises the LGA and five partner organisations which work together to support, promote and improve local government.



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Confidence in local democracy

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28 May 2009

94% in favour of councillor's Code of Conduct

There's a high - and growing - level of support among councillors for the national Code of Conduct covering their behaviour.

Councillors and council officers recognise the importance of high standards to local democracy, and they are increasingly supportive of the work of the Standards Board for England, the national regulator of councillor behaviour.

The Standards Board for England researches the views of councillors and council officers every two years.

This year's survey shows support for the Code of Conduct and the local standards framework is at an all time high:

- 94% support the need for members to sign up to the Code, an increase of 10% since 2004
- 83% consider maintaining high standards of behaviour to be one of the most important issues facing local government
- More than 70% feel that it is right for complaints to be handled locally

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- 89% are confident that their authority is doing a good job of upholding standards
- Four times as many agree as disagree that 'member's standards of behaviour have improved over recent times.'

Results also show that 77% think the Standards Board has been successful in defining standards of behaviour for councillors, an increase of 12% since 2004.

The Standards Board is also seen to be more successful in improving the reputation of local government amongst the public, and those who are satisfied with the work of the organisation has grown by 17% since 2004.

Dr Robert Chilton, the Chair of the Standards Board said: "This is a very encouraging set of results. At a time when public trust in politicians is under serious challenge, and standards matter more than ever, they show that local government is leading the way, embracing the high standards of conduct, transparency and accountability that the public has every right to expect.

"The Standards Board will continue to support authorities in this essential work, providing the expert, independent national scrutiny needed to protect standards and boost public confidence in local democracy."


Ends.

For media enquiries, contact the press office on 0161 817 5400 or email press.enquiries@standardsboard.gov.uk.

Notes for editors

- The Code of Conduct was first introduced in 2001 and the system to deal with complaints about local politicians was overhauled in 2008, when local authorities took full responsibility for assessing and managing complaints, guided and supported by the Standards Board.
- The Standards Board monitoring reports show that between 8 May 2008 and 30 April 2009 authorities received 2,863 complaints. 54% were made by members of the public, 4% by council officers and 36% by councillors.
- Every two years the Standards Board surveys the levels of satisfaction of local government with the performance of the Standards Board and their attitudes to the ethical environment. The survey was first undertaken in 2004 and was repeated in 2007. The latest survey was conducted between 15 January and 9 March 2009.
- A self-completion postal questionnaire was used to collect the views of stakeholders from all types of local government authority in England, including principal authorities, town and parish councils, and police, park and fire authorities. The survey included elected and non-elected members, monitoring officers and parish clerks.
- In total, 3,784 questionnaires were distributed across 473 principal councils and police, park and fire authorities, and 1,758 questionnaires were distributed across 879 town and parish councils.

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Epping Forest Assessments Subcommittee - Cases Listing 2008/09

Year	No.	Case reference no.	Case status	Received - (dd/mm/yyyy)	Investigator
2008	1	EFDC 1/2008	Closed - Investigators Report received - Hearing Subcommittee - 31 March 2009 No Breach	23/06/2008	IW
2008	2	EFDC 2/2008	Closed post Review Panel	27/06/2008	n/a
2008	3	EFDC 3/2008	Closed - Investigators Report received - Hearing Subcommittee - 31 March 2009 No Breach	30/06/2008	IW
2008	4	EFDC 4/2008	Open - Investigators Report to Assessment Sub 3/4/9 - Referred to Hearing Subcommittee on date TBA	18/11/2008	external
			Hearing delayed due to staff sickness – date to be re-agreed		
2008	5	EFDC 5/2008	Closed post Assessment	25/11/2008	n/a
2009	6	EFDC 1/2009/A	Open - Referred to MO for investigation - External investigator to be appointed	17/02/2009	external required
			To be linked with complaint 5/2009 – contract sum to be confirmed subject to budget being available.		
			Report to Cabinet may be required		

Year	No.	Case reference no.	Case status	Received - (dd/mm/yyyy)	Investigator
2009	7	EFDC 1/2009/B	No action - review request deadline passed	17/02/2009	n/a
2009	8	EFDC 1/2009/C	No action - review request deadline passed	17/02/2009	n/a
2009	9	EFDC 1/2009/D	No action - review request deadline passed	17/02/2009	n/a
2009	10	EFDC 2/2009	Referred to Standards Board for England - No action letter 7 April	23/02/2009	n/a
2009	11	EFDC 3/2009	No action - review requested - Hearing Subcommittee held on 21 April - Passed for investigation by MO	23/02/2009	IW
2009	12	EFDC 4/2009	Closed – Review held 21 April 2009 – No further action	26/02/2009	n/a
2009	13	EFDC 5/2009	Review held on 2 June 2009 – To be combined with complaint 1/2009/A – subject to budget (see above)	12/03/2009	n/a

Report to the Standards Committee

Date of meeting: 15 July 2009



Subject: Review of Complaints Procedure

Officer contact for further information: Ian Willett - Deputy Monitoring Officer

Recommendations:

(1) That the measures on the following aspects of the Complaints Procedure be considered namely:

- (a) Officer roles;**
- (b) Advice on complaints;**
- (c) Initial Assessments;**
- (d) Assessment and review hearings;**
- (e) Investigation;**
- (f) Grounds for referral; and**
- (g) Correspondence; and**

(2) That agreed points be incorporated in existing procedure notes for future reference.

Purpose of the Report

To review experience with the local assessment review/adjudication process for dealing with complaints.

Review of Complaints Procedure

1. As the complaints/local assessment process has been operating for over a year, officers have reviewed current procedures. The following matters are submitted for discussion:
 - (a) Officer Roles**
2. Currently, the procedures for dealing with complaints recognise the following roles:
 - (i) assessments (S Hill)
 - (ii) reviews of assessments (G Lunnun)
 - (iii) investigations (I Willett)

- (iv) support of all Sub Committees at meetings (C O'Boyle)
- (v) support for Hearings Sub-Committees (G Lunnun)
- (vi) advice on how to complain (S Hill)
- (vii) advice on the Code of Conduct (I Willett/G Lunnun/S Hill)

Items (vi) and (vii) are newly identified roles. Item (vi) has been introduced because experience has shown that advice on the code can easily become a discussion about a complaint. Item (vii) is an existing function which has to be kept separate from the process of investigating a complaint. The proposed staffing allocations for (vi) and (vii) are indicated above.

(b) Advice on Complaints – Mediation/Conciliation

3. Officers feel that there should be attention given to prompting potential complainants to think seriously about whether a complaint is the most appropriate solution.
4. In the Committee's annual report, reference was made to the number of complaints originating from a small number of Parish Councils and, to arrest this trend, it may be necessary for officers as part of the pre-assessment phase to assess whether complaints are merely the continuation of disputes by other means. More emphasis could be placed on conciliation/arbitration as a way of resolving underlying problems. The difficulty with this approach will be finding other agencies/individuals to take on this role. The resources available in this Council for such activity are likely to be restricted so questions of cost may arise.
5. Attached as an Appendix is a report which seeks to raise this matter with Parish Councils at the next Local Councils' Liaison Committee.

(c) Initial Assessments

6. Councillor Mrs Borton has raised a number of concerns about the assessment process as follows:
 - (i) Confidentiality – what policy is to be adopted when a Councillor who has been notified that they are the subject of a complaint approaches a member of the Standards Committee for advice particularly if the latter is the subject of a separate complaint already?

Councillor Mrs Borton also queries the practice adopted in a Parish Council of publicly announcing that a complaint has been made.

Comment: It is a requirement that Standards Committee members should not advise Councillors outside the formal process. This is because, may have to assess the complaint etc. There is a requirement for Parish Council Clerks to be notified that a Parish Councillor is subject to a complaint but this is not for public disclosure for fear of prejudicing the assessment of the complaint.

- (ii) Notification of Complaints

Councillor Mrs Borton expresses concern about the notification of complaints to the subject Councillor. Currently no detail is given, this being disclosed once an investigation is commissioned. The query is that it may be against "natural justice" if the subject Councillor is denied access to the substance of the complaint.

In terms of notification (in the case of Parish and Town Councils) to the Parish Clerk, no detail is disclosed.

Comment: Details of the complaint are not disclosed at the assessment stage because there is a need to maintain confidentiality so that an investigation (if ordered) is not compromised. Notification to the Parish Clerk is a requirement of the procedure but is also confidential.

(d) Assessment/Review Hearings

7. One subject Councillor has complained that they are denied access to Assessment and Review Sub-Committee hearings and that this is against natural justice, in that they are not able to reply to the allegation.

Comment: Standards Board advice indicates that assessment and review hearings should be held in private. This is because these stages in the process are designed to assess the complaint at face value and whether there is a potential breach of the Code, not to carry out an investigation. Furthermore, potentially unfounded and damaging allegations will be considered and should not be disclosed unless properly investigated for adjudication purposes.

(e) Complaint Investigations – Officer Holders

8. The Standards Board advice allows a complaint to be referred if it is considered that a local investigation would not be effective because of the position held by a subject Councillor (e.g. Leader, Cabinet member, Standards Committee member).
9. Officers feel that advice to complainants on this aspect needs to be reinforced. It is also suggested that the policy should be one of considering each such case on its merits and that the arguments for referral to the Standards Board should be set out in the agenda for Assessment Sub Committee meetings.

(f) Grounds for Referral for Investigation

10. Officers suggest 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. This will not however preclude any other breach which arises in investigation from being taken into account.

(g) Standard Letters

11. Action will be taken to strengthen the standard letters of the Standards Board for the invitation of comments on draft investigation reports. It has sometimes proved difficult to obtain approval/comments from all parties within a reasonable period.
12. A pro forma for responses will be used with a clear timescale. Once the period has elapsed, reports will be finalised.

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Report to Local Councils' Liaison Committee

Date of meeting: 15 July 2009



**Epping Forest
District Council**

Subject: Complaints Against Parish Councillors Alleging Breaches of the Code of Conduct

Officer contact for further information: I Willett - (Deputy Monitoring Officer) (01992 564243)

Democratic Services Assistant: Adrian Hendry (01992 564246)

Recommendations:

- (1) To note the relevant sections of the 2008/9 Annual Report of the Epping Forest District Standards Committee as set out in this report; and**
- (2) To seek ideas from Parish and Town Councils as to how the current situation can be addressed.**

Report:

- ...
1. The Standards Committee's Annual Report for 2008/9 was submitted to the District Council on 30 June 2009. This is therefore an opportune moment to draw to the Liaison Committee's attention some of the conclusions drawn in that report concerning complaints against Councillors alleging breaches of the Code of Conduct received during the year 2008/9.
 2. At paragraphs 5.13 - 5.16, the Committee comments:
"5.13 We draw to the attention of Council the following points:
 - (a) of the 13 complaints, four have been investigated or are due to be investigated;**
 - (b) of the four investigations, two have been completed and adjudications held;**
 - (c) of the remaining two investigations, one has been completed and is due to be submitted to an Adjudication Sub-Committee while the other investigation is due to commence shortly;**
 - (d) of the nine complaints where an initial assessment resulted in a finding of 'no investigation', four have subsequently been the subject of requests for reviews by complainants;**
 - (e) of those four requests for reviews, one was successful and has resulted in an investigation, one is pending and two were unsuccessful;**
 - (f) of the 13 complaints, three related to District Councillors and 10 to Parish and Town Councils;**
 - (g) of the 10 complaints against Parish and Town Councils, eight related to**

two Parish Councils;

(h) of the 10 Parish Council complaints, all were by one Parish Councillor against another.

5.14 We have drawn a number of conclusions from these statistics. Firstly, the number of complaints having been at a low level for many months has suddenly jumped to the present totals. Bearing in mind the preponderance of cases which emanate from two Parish Councils, it seems to us that there could be circumstances of those two Parish Councils, which might explain the current level of complaints. There may be a trend towards Councillors attempting to use the Code of Conduct rather than trying to resolve complaints internally. There is no doubt in our minds that the number of complaints currently being received is placing a strain on the Council's staffing resources to meet the statutory requirements.

5.15 On the question of "member on member" complaints, we had occasion in one case to refer a complaint to the Standards Board for England. This is an option which is available to Standards Committees in particular circumstances where for a variety of reasons it is unlikely that an investigation can be effectively carried out at a local level. In the case in question, the Standards Board for England decided that no investigation was necessary following their initial assessment. The Standards Board for England made one or two pertinent comments about "member on member" complaints which we reproduce below:

"In the course of their duties members are likely to encounter occasional ill-considered or rude commentary. We (the Standards Board for England) agree that this is inappropriate and unprofessional and on occasions may amount to a potential breach of the Code of Conduct which requires members to treat others with respect.

However, we also consider that the threshold for alleged "member on member" disrespect is higher than disrespect towards the public or officers. Elected members' responsibilities are chiefly to serve their community and not to invest time in personal disputes".

5.16 The Monitoring Officer has reported these comments to us at a recent meeting and we feel that they fully justify the robust approach being taken by Assessments Sub-Committees in the initial assessment of complaints. It is worth bearing in mind that of those complaints with which we have had to deal over the last year only three came from members of the public. These are related to District Councillors."

3. At paragraphs 8.1 - 8.4, the Committee observes:

"8.1 We have already mentioned in this report the effect of the new complaints regime on staffing resources. All of this additional work has been absorbed by certain key officers of the Council without additional staff. It is also fair to say that the members of the Standards Committee have also incurred a substantial additional workload in terms of their involvement in the complaints process. We will be monitoring carefully the support we need to fulfil our statutory roles.

8.2 We have also been thinking about the cost of our activities in other ways. We have asked that in future when investigations are conducted in house (usually by the Deputy Monitoring Officer) that he should operate a system of time recording so that a notional cost of these investigations can be arrived at. This is merely an extension of what has to happen in some cases

when external investigators are engaged.

8.3 In 2008/09 it was clear that there was no officer in house who could undertake two investigations because at various times all had been involved in discussions which had led to the complaint. An external investigator was engaged by the Council at a cost of £2,400 to complete the review. One other investigation is now being referred for external investigation and the costs quoted are higher. The current working budget which we have at our disposal is £5,400. This covers not only the cost of external investigators but also training courses.

8.4 There are two points which arise here:

(a) we seek the cost of external investigations and the likely cost of internal investigations as every justification for a very robust approach which the Assessments Sub-Committee is now taking to complaints; and

(b) that if the number of complaints received continues at the current rate, there is every likelihood that the Monitoring Officer will have to come forward with a request for additional funding in order that the Council can discharge its statutory responsibilities."

4. To amplify the comments made under 8.4 (b), the Committee's budget is £5,000 for 2009/10 and this is already full committed at month 3 of the financial year. All such investigations are costly.
5. There is a clear impression among District Council staff that complaints against Councillors by other Councillors can be a symptom of other problems and that there is a challenge here to find the correct way of resolving difficulties within Parish Councils. Are complaints under the code of conduct the answer? Are the Essex and National Associations of Local Councils able to intervene with training or conciliation if there are difficulties? Is the Standards Committee to direct that such steps are taken?

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Report to the Standards Committee

Date of meeting: 15 July 2009



**Epping Forest
District Council**

Subject: Dispensations

Officer contact for further information: Colleen O'Boyle - Monitoring Officer

1. The Standards Committee (Further Provisions) (England) Order 2009 makes changes to the criteria for granting dispensations for members to speak and vote when they have a prejudicial interest.
2. A standards committee can grant a dispensation to a member:
 - where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
 - where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.
3. To decide whether these criteria apply, members must ignore any dispensations that have already been given to others at the meeting. The requirement to ignore any dispensations already granted means that any previously granted dispensations are disregarded for the purposes of working out whether the two circumstances above apply.
4. So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, a situation could arise where once two people had been granted dispensations, the remaining four would be ineligible. This is because at that point there would be less than 50% of the committee who could not vote.
5. Even if the criteria apply, members cannot get a dispensation to:
 - allow them to take part in voting at an overview and scrutiny committee about a decision made by any body of which they were a member at the time the decision was taken
 - allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own
6. Ultimately it is for an authority's standards committee to decide what criteria they will apply when considering a request.
7. The criteria that will be applied and the process that will be followed should be made available to all members by the standards committee.
8. By law, a member must submit an application in writing for consideration by the standards committee. It is up to the standards committee whether or not they grant a dispensation and there is no right of appeal from their decision.

9. A standards committee can decide the nature of any dispensation it grants. For example, the dispensation may allow a member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

10. After four years has elapsed since a dispensation was granted, it can no longer be used.

11. The decision must be recorded in writing and must be kept with the register of interests maintained by the monitoring officer.

12. The Standards Board has issued the attached new guidance on dispensations to reflect the new regulations.

DISPENSATIONS

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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

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

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:
 - the authority
 - its executive and its committees and sub-committees
 - any other committees, sub-committees, joint committees, joint sub-committees or area committees

of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

dispensations

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not

dispensations

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.