

Report to the Standards Committee

Date of meeting: 14 July 2009



Subject: Planning Protocol - Review

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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.

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.