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DIRECTOR

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LEGAL AND MEMBER SERVICES MANAGER

STANDARDS COMMITTEE

Notice of a Meeting to be held in the Council Chamber,
Civic Centre, Tannery Lane, Ashford
on TUESDAY, the 9TH MARCH 2004 at 7.00 p.m.

The members of this Committee are:-

Cllr. Davidson (Vice-Chairman)

Cllrs. Cooling, Mrs Larkin, Wickham, Yeo

Parish Council Representatives: Mr J M G Clarke (Substitute Representative – Mr D Lyward)

Independent Members: Mr B N Lowry, Mrs K McNicol, Mrs C A Vant

N.B. Under the Council's Public Participation Scheme, members of the public can submit a petition, ask a question or speak concerning any item contained on this Agenda (Procedure Rule 9 refers).

A G E N D A

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Nos. |
|--|----------------------|
| 1. Apologies/Substitutes – To receive notification of substitutes in accordance with Procedure Rule 1.2(iii) | |
| 2. Election of Chairman | |
| 3. Declarations of Interest – Declarations of Interest under the Code of Conduct adopted by the Council on the 1 st May 2002 relating to items on this Agenda should be made here. The <u>nature</u> as well as the existence of any such interest must also be declared | |
| 4. Minutes – To approve the Minutes of the meeting of this Committee held on the 25 th June 2002 (copy attached for ease of reference) | |

PART 1 – FOR DECISION

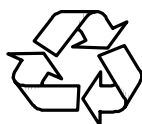
5. Local Determination of Code of Conduct Complaints by Standards Committee
6. Draft Good Practice Protocol for Councillors Dealing with Planning Matters

PART II – MONITORING/INFORMATION ITEMS

DJS/DH
1st March 2004

Distribution to: All members of the Standards Committee
All other members of the Council for information
Clerks to Parish/Town Councils within the Borough
Chief Executive
All Directors

Queries concerning this agenda? Please contact Diana Sawyer 330499
diana.sawyer@ashford.gov.uk



STANDARDS COMMITTEE

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **25TH JUNE 2002**

PRESENT: Cllr. Winslade (Chairman);
Cllr. Lawrie (Vice-Chairman);
Cllrs. Bartlett, Gray, Maltby

Mr J M G Clarke – Parish Council Representative
Mr D Lyward – Substitute Parish Council Representative
Mr B N Lowry and Mrs C A Vant – Independent Members

APOLOGIES: Mr J Holborow, Mrs K McNichol

ALSO PRESENT: Monitoring Officer, Head of Democratic Services, Member Services Officer

54 **MINUTES**

Resolved:

That the Minutes of the meeting of this Committee held on the 2nd April 2002 be approved and confirmed as a correct record.

55 **GOVERNMENT CONSULTATION PAPER - LOCAL INVESTIGATION AND DETERMINATION OF MISCONDUCT ALLEGATIONS**

The Monitoring Officer reported that the Government had issued a consultation paper regarding the Conduct of Councillors – Local Investigation and Determination of Misconduct Allegations which sought the views of consultees by the 1st July 2002 and had been attached as an appendix to the report. The Monitoring Officer's report set out a number of recommended responses and sought the Committee's views. The Committee considered each page of the report which comprised:-

Background;
Consultation Paper – Section 1 – Proposed Framework.

- Step 1: There may be reason to believe a Councillor has breached the Code of Conduct.
- Step 2: After a formal allegation of a Code of Conduct breach has been made.
- Step 3: Investigation.
- Step 4: Determination of the allegation.
- Step 5: Appeals.

Section 2 – Roles and Responsibilities and Regulations

The Committee discussed the proposed response to Step 1 and the Monitoring Officer confirmed that he had not included Section 3 in the Appendices because he considered that all matters had been included within his proposed responses. The Monitoring Officer advised that the responses to Steps 1-3 had been fully considered by the various National Associations because it was their belief that sensible relations had not been established between the Ethical Standards Officers, Standards Committees and the Monitoring Officers. Hence, the proposed response because of the perceived need to acknowledge the reality of Monitoring Officers receiving and seeking to resolve complaints locally in certain circumstances. The responses elaborated what had been discussed at the National Association of

Secretaries and Solicitors and explained that if the Monitoring Officer received a complaint (under the proposed arrangements) he would have to forward this directly to the Standards Board via the Standards Committee.

A Member suggested that whilst this proposal might work for Ashford, National Government wished to check complaints received by Local Government and there was a duty to report nationally such local complaints and without a national mechanism some Local Authorities might not report every complaint. The Monitoring Officer explained that under his suggested response complainants would receive information that a complaint could be dealt with locally or there was an option to report the complaint fully to the Standards Board. It would only be with the agreement of the complainant that a matter would be dealt with locally and this information would be provided from the outset. A further disadvantage to the proposal might be that there was not consistency of approach with similar penalties being applied by different Local Authorities. In response to a further question, the Monitoring Officer advised that no guidance had been provided by Government as to what comprised a less serious case, which under the proposals was more likely to be referred back for local determination. The Monitoring Officer in response to a suggestion that a system be set up similar to the powers of the Secretary of State to "call in" a planning application said that such a convention might develop but the legislation was clear in that currently the Standards Board had to deal with all complaints and the suggested response to Step 1 proposed a procedure for what a complainant might do, if they did not wish to complain direct to the Standards Board. The Monitoring Officer confirmed there was no provision in the legislation at present for informal referrals. It was further suggested that the Monitoring Officer should report to the Standards Committee the circumstances of those complaints which had been resolved locally if this was to be permitted under the final proposals. It was further suggested that "would" be replaced by "may be" in the second sentence of Response (i) after which this response was agreed.

The Response to Step 2: After a Formal Allegation of a Code Breach Has Been Made, was agreed.

The Monitoring Officer regarding Step 3: Investigation, advised that Monitoring Officers had not been given the same powers as Ethical Standards Officers to investigate, so if a complaint was referred back to the Monitoring Officer there would be no powers to compel witnesses to provide information. He further advised regarding Response (vii) that if the Monitoring Officer investigated a complaint and then presented this to the Standards Committee he could not assume the role of advising the Standards Committee at the same time and under present legislation the Deputy Monitoring Officer could only advise the Standards Committee if the Monitoring Officer were ill or absent. The Kent Monitoring Officers were proposing a protocol on providing advice to Standards Committees in such instances. Alternatively another in-house or external Solicitor might be employed to undertake the investigation of the complaint.

The Committee debated Step 4: Determination of the Allegation, as to the proposed size and composition of panel which might hear a complaint or an Ethical Standards Officer's report to the Standards Committee. The consultation document proposed a panel of five; the Chairman being independent and other four members being chosen by the Independent Chairman. The Monitoring Officer considered that this was too prescriptive and suggested that there be a maximum of six members of the panel and that the composition of the panel should be for local determination. The selection of members to the panel was discussed because it might be that some Borough Council Members of the Committee were also Parish Councillors. The Monitoring Officer advised that when the regulations were published the Committee would have to consider the way in which people were selected to the panel and various scenarios were discussed. The Committee agreed that the Panel Chairman should be an independent member of the Standards Committee and that Response (ix) sentence three, should finish after the word "realistic".

In response to a question, the Monitoring Officer advised regarding Step 5: Appeals would be made to an Adjudication Panel, which was not part of the Standards Board. The Monitoring Officer drew attention to Section 2 – Roles and Responsibilities and Regulations - Response (xvi) as there had been no reference in the Regulations to costs for a Councillor, or indeed a Parish Councillor, who wished

to be represented regarding a complaint and where no grounds for the complaint were subsequently found. The legal position on a Council providing an indemnity (to cover its Members) was unclear but the Monitoring Officer did not believe that the Parish Councils, being smaller, would be able to do so. In response to a question as to whether costs could be covered through the Civil Courts (for vexatious complaints) the Monitoring Officer advised that one would need to show malice but in any event where cases were referred back the Standards Board would have verified that a complaint was not vexatious. Alternatively, it might be an honest complaint which was found to be groundless and a Councillor or Parish Councillor might have had to defend themselves at a cost. Was it right that the Councillor paid the fees; right that the Local Authority indemnified the fees; or should there be some national mechanism for the award of costs? The Monitoring Officer said it did not appear that Government had addressed these issues and agreed to add a sentence to Response (xvii) regarding the position of Parish Councillors.

Resolved:

- That (i) subject to the amendments above, the Standards Committee endorses Responses (i) – (xvii) to the Consultation Paper as set out in the body of the report and the Monitoring Officer respond to the consultation by the 1st July 2002.**
- (ii) the Monitoring Officer be authorised to respond to any further consultation, including draft regulations, so far as consistent with the Committee’s responses.**
- (iii) a further report be presented to the Standards Committee when the final Section 66 Regulations are issued.**
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**STANDARDS COMMITTEE
9TH MARCH 2004**

REPORT OF THE MONITORING OFFICER

**LOCAL DETERMINATION OF CODE OF CONDUCT
COMPLAINTS BY STANDARDS COMMITTEE**

1. **Introduction**

The Local Authorities (Code of Conduct)(Local Determination) Regulations 2003 came into effect on the 30th June 2003 and provide for the Standards Board's Ethical Standards Officers (ESO) to refer complaints of misconduct by Councillors to the Standards Committees of local authorities for local determination. These regulations cover the case where the ESO has already completed the investigation into a complaint. Later this year, further regulations will provide for complaints to be referred at an earlier stage, for the Monitoring Officer to arrange for local investigation before reporting to the Standards Committee. The Standards Board for England has now published statutory guidance on how local authorities should implement the new regulations.

2. **Which cases will be referred for local determination?**

On completing their investigation of a complaint, the ESO has to decide which of the following descriptions the matter comes within:

(a) **There is no evidence of a failure to comply with the Code of Conduct**

- (i) In this case the ESO simply sends a copy of his/her report with that conclusion to the member, the complainant and the Monitoring Officer and the Monitoring Officer would report to the Standards Committee that the complaint had not been upheld. The Standards Committee then has no role in relation to the matter

(b) **No action needs to be taken in respect of the matters which are the subject of the investigation**

This would normally be the case where the failure has been very minor and has not caused any loss or damage to any person. It does not mean that there has not been a failure to comply. In this case the ESO sends a copy of his/her report with that conclusion to the member, the complainant and the Monitoring Officer and the Monitoring Officer will report to Standards Committee that there is no action to be taken. The Standards Committee then has no role in respect of the matter.

(c) **The matters which are the subject of the investigation should be referred to the Monitoring Officer of the relevant authority concerned**

This will be the case where the ESO concludes that there has been a significant failure to comply with the Code of Conduct but that it is likely that the appropriate action to be taken is within the range of actions which are available to the Standards Committee of the authority concerned, namely:

- (i) Censure
(ii) Withdrawal or partial withdrawal of Council-provided facilities for up to 3 months
(iii) Suspension as a member of that Council, in whole or in part, for up to 3 months, and/or
(iv) Consequent withdrawal or partial withdrawal of allowances for up to 3 months

In this case, the Monitoring Officer is required to report the matter to the Standards Committee and the Standards Committee is required to determine the matter within 3 months of the ESO referring the matter to the Monitoring Officer.

(d) **The matters which are the subject of the investigation should be referred to the President of the Adjudication Panel for England for adjudication by a Case Tribunal**

This will normally be the case where the ESO considers that there has been a significant failure to comply with the code of conduct and either:

- (i) it is likely that the appropriate action to be taken is in excess of that which can be imposed by a Standards Committee (a Case Tribunal can suspend a member in whole or in part for up to a year, or can disqualify a member from membership of any local authority for up to 5 years), or
- (ii) the nature of the failure to comply is such that it would be inappropriate for it to be dealt with by the Standards Committee, for example where it affects broader national issues or would be difficult to resolve locally.

In this case, the Monitoring Officer will report to the Standards Committee that the matter is to go to a Case Tribunal and will report the final decision of the Case Tribunal. Where the Case Tribunal decides to disqualify the member, that disqualification takes effect as soon as the Case Tribunal writes to the member and the authority to that effect. At that point the member ceases to be a member of any local authority and is ineligible to be nominated or elected as a member until the disqualification period has expired. At that point, a vacancy arises necessitating a by-election. Where the Case Tribunal decides that the member should be suspended, it will write to the Monitoring Officer to instruct the Standards Committee to suspend the member, and the Standards Committee must then meet and suspend the member as instructed. Suspension can be in whole (ie: the member cannot act as a Councillor, such as acting as an executive member, or participating in Council or Committees, and receives no members' allowances during the period of suspension) or can be partial (for example, suspension from membership of the Executive or as a member of Planning Committee, losing any special responsibility allowances otherwise payable for such duties). At the end of the suspension, the member returns to his/her previous positions, unless he/she has otherwise ceased to be a member or the Council has in the meantime removed him/her from such positions. In addition, the Case Tribunal can make recommendations to the Standards Committee, for example about improving systems or providing further training for members, and the Standards Committee must consider those recommendations and report back to the Standards Board.

3. **The Pre-Hearing Procedure**

The Standards Board's guidance sets out a pre-hearing procedure in preparation for the hearing. This pre-hearing procedure is designed to identify any disputes of fact between the member and the Ethical Standards Officer's report, and to identify any witnesses and evidence to be presented, so that the necessary documents and witnesses can be organised to ensure that there are no surprises at the hearing and that the Standards Committee has everything which it needs in order to determine the complaint. In practice, much of this pre-hearing procedure will be conducted by the Monitoring Officer writing to the member and asking him/her to provide necessary information, but the Standards Board recommends that the member be given the opportunity to deal with the matter at a formal meeting of the Standards Committee if he/she so demands. Given the requirement that the hearing be held within 3 months of the case being referred to the authority, and the need to maintain the impartiality of the Standards Committee in advance of the actual hearing, I would recommend that the conduct of the pre-hearing process and the reporting of that process to the Standards Committee be delegated to the Monitoring Officer.

One feature of the pre-hearing process is that, once the member has identified any points on which he/she disagrees with the ESO, the Monitoring Officer will ask the ESO whether he/she wishes to attend the local hearing to give evidence, or to arrange for the attendance of any

witnesses. The Standards Committee can request his/her attendance at the hearing where it feels that this would be helpful in resolving any dispute.

A recommended procedure for the conduct of the pre-hearing is set out at Appendix One.

4. **The Hearing Procedure**

The Standards Board has recommended a very helpful model procedure for the actual hearing before the Standards Committee. There are a few areas where I recommend that the Committee amplify this model procedure to make it clearer and to comply with normal committee procedures, or where the Committee may wish to streamline the procedure without any loss of fairness. I therefore attach as Appendix Two a procedure and recommend that the Committee adopt it for use at any local hearings. Note that the Chairman of the Standards Committee can vary the procedure in any particular case where he/she considers that it would be beneficial to do so.

5. **Further Developments**

(a) Standards Sub-Committees

Initially, the Standards Committee was only permitted to form a Sub-Committee to deal with Parish Council matters. The Local Government Act 2003 includes provision for such Sub-Committees for any other purpose and the Standards Board recommends that it would be appropriate to set up such Sub-Committees, of no more than 5 members, to hear individual matters rather than have hearings before the full Standards Committee. The Committee may prefer to hold the first few hearings before the full Committee in order to develop expertise, but then to set up Sub-Committees, perhaps standing "Borough matter" and "Parish matter" Sub-Committees to hear individual matters. A possible course of action would be to establish a number of such Sub-Committees, each of five members (but with a Parish Council representative only on the "Parish matter" Sub-Committees) and to delegate to the Monitoring Officer the allocation of individual matters to individual Sub-Committees, broadly in rotation, but also according to the availability of the relevant members and any conflicts of interest.

(b) Local Investigation

The Local Government Act 2003 also paves the way for early reference of full local investigation of complaints. Previously, the Monitoring Officer had no power to delegate his/her functions, which means that there has been an unavoidable conflict between the Monitoring Officer's duty to investigate a referred complaint and his/her role as impartial adviser to the Standards Committee. The Act has now enabled the Monitoring Officer to delegate any of his/her responsibilities. We therefore anticipate a further set of regulations under which the complaint will be referred to the Monitoring Officer before it has been investigated, and the Monitoring Officer will then arrange for its local investigation. In practice, he/she will arrange for another officer or an external investigator to conduct the investigation and I will continue as the primary adviser to the Standards Committee. I will bring a further report on this once the further regulations are published. Monitoring Officers within Kent are in the process of agreeing a protocol whereby it will be possible to seek mutual assistance between authorities in certain limited circumstances upon payment of a fee. Otherwise, it may be necessary to arrange for external investigation.

6. **Standards Terms of Reference etc**

The proposed method of hearing cases by way of Sub-Committees will require complete revision of the current articles of the Constitution and Terms of Reference and Membership of the Standards Committee and appointment of Sub-Committees as well as additions to the Scheme of Delegation. It will be necessary for the Administrative Services Manager to submit a further report on these matters to the Selection and Constitutional Review Committee.

7. **Training**

I have now arranged for a training session on the conduct of local hearings for Wednesday 24th March. The training will be provided by Peter Keith-Lucas, Local Government Partner at Wragge & Co LLP, a national firm of solicitors based in Birmingham and London. Peter Keith-Lucas is a former Local Authority Solicitor and District Council Chief Executive who is an

acknowledged expert in this area of law and he wrote the model procedure for local hearings which has been adopted by the Standards Board for England. He has conducted a number of high profile standards investigations and is recognised as an entertaining speaker.

The training will be based on a fictional complaint that Councillor Richard Green treated Mrs. Suzanne Holt, an Assistant Director of Planning, with disrespect at a meeting of the Planning Committee, and will require the Standards Committee to conduct the actual hearing, receiving the evidence of the Ethical Standards Officer and of Councillor Richard Green and determining whether a breach of the Code of Conduct occurred, and if so, what sanction might be appropriate. The training will be of interest and relevance to all members whether or not they are members of the Standards Committee. The programme for the training is as follows:

- 09.30 Coffee and registration
- 10.0 an update and refresher on the Code of Conduct
- 11.15 Coffee
- 11.30 Complaints to the Standards Board
The "Tariff" – How cases have been dealt with by Case Tribunals
The Pre-hearing process and introduction to the Case Study
- 13.00 Lunch
- 13.45 The Hearing
- 15.30 Appeals and local investigations
- 16.00 Finish.

RECOMMENDATIONS

- 1 That the Committee adopt the attached Pre-Hearing Procedure (Appendix One) and the attached the Local Determinations Hearing Procedure (Appendix Two);**
- 2 That the Committee delegate the conduct and reporting of the pre-hearing process to the Monitoring Officer;**
- 3 That the Committee resolve to hear the first three referred matters as full Committee;**
- 4 That the Committee establish "Borough matter" and "Parish matter" Sub-Committees as suggested to hear individual matters, and delegate to the Monitoring Officer the allocation of individual matters to individual Sub-Committees each Sub-Committee to consist of five Members, three Borough Councillors and two Independent Members on Borough matter Sub-Committees and two Borough Councillors, two Independent Members and a Parish Councillor on Parish matter Sub-Committees.**
- 5 The Administrative Services Manager submit a further report to the Selection and Constitutional Review Committee with suggested changes to the Council's Constitution, the Terms of Reference and Membership of the Standards Committee and the proposed Sub-Committees to reflect the new arrangements.**

THE PRE-HEARING PROCEDURE

1. **Purpose of Pre-Hearing Procedure**

The pre-hearing process is designed to address procedural issues in order to ensure local determinations are dealt with fairly and efficiently.

The aims are:-

- (a) to identify whether the member the subject of the hearing disagrees with any of the findings of fact in the report of the investigator;
- (b) to decide whether any disagreements are significant to the hearing;
- (c) to decide whether or not to hear evidence about these disagreements;
- (d) to decide whether any parts of the hearing should be held in private or any parts of the investigator's report should be withheld from the public.

2. **Format of Pre-Hearing Procedure**

The pre-hearing process will be conducted in writing and with the Monitoring Officer acting as link between the member and the investigator.

3. **Notification to the Member**

Upon receipt of the Ethical Standards Officer's report, the Monitoring Officer will:-

- (a) arrange a provisional date for the hearing (not less than 35 days from the date the investigator's report is received by him but the hearing must be held within the period of three months from the date the Monitoring Officer received the report) and identify the Committee or Sub-Committee by which the hearing will be held;
- (b) notify the members of the Committee/Sub-Committee of the date;
- (c) notify the member of the reference of the complaint for local determination, of the provisional date for the hearing and provide the member with a copy of the report, the pre-hearing procedure note and the hearing procedure note;
- (d) notify the Parish Clerk of the same matters in the case the relevant member is a Parish Councillor;
- (e) notify the complainant of the same matters.

4. **Pre-Hearing Inquiries of the Member**

Following notification under paragraph 3 the Monitoring Officer will write to the member and require him to complete and return within 14 days (or such longer period as the Monitoring Officer shall in his discretion permit) Forms A to E substantially in the form recommended by the Standards Board. These forms will ask the member to identify findings of fact with which the member disagrees; identify any additional evidence relevant to the allegation, and to provide detailed information relevant to attendance at the hearing and calling of witnesses and views on the need for private hearings in whole or part.

Notes: (a) The presumption is that the hearing will be conducted in public and that all documentation will be available for public inspection at least five clear days before the hearing. The decision to conduct all or any part of the hearing in private or to withhold any document from public inspection will be taken in accordance with the legal provisions on access to information in the Local

Government Act 1972 (as amended) having due regard to the Human Rights Act 1998. A note on admission of press and public to Standards Committee hearings is attached to the Hearing Procedure.

- (b) Having been given an opportunity to identify disagreement with the findings of fact contained in the report of the investigator, the member will not be permitted to raise at the hearing any new disagreement, unless exceptional reasons exist for doing so eg: as a result of new evidence which has only just become available.
- (c) The provisional hearing date will not be changed unless the member has indicated a wish to attend the hearing/be represented and there are good reasons why he/she/the representative is unable to attend on the proposed date. Even where there are good reasons to change a date, the hearing may have to take place in the absence of the member or representative if necessary to enable the Committee/Sub-Committee to make a determination within the period required by law.
- (d) If the member fails or declines to acknowledge receipt of the investigator's report or return the Forms A to E (or any of them) or decides not to attend the hearing, the Committee or Sub-Committee may hear the case in his absence.

5. **Pre-Hearing Inquiries of the Investigator**

On receipt of the response of the member to the investigator's report and the forms referred to in section 4 (or on the expiry of 14 days or such longer period as has been permitted from their being sent to the member whichever is the sooner), the Monitoring Officer will:-

- (a) notify the investigator of the date of the hearing;
- (b) invite the investigator to comment on the member's response (if any) within 14 days and indicate whether he intends to attend the hearing or be represented or give evidence or call witnesses and whether he wishes any part of the hearing to be held in private or any part of his report to be withheld from the public;
- (c) invite the attendance of the investigator if the proper conduct of the hearing requires it in the opinion of the Monitoring Officer.

6. **Preparations for Hearing**

- (a) The Monitoring Officer shall identify any areas of dispute between the member and the investigator and arrange for the attendance of any necessary witnesses to enable the hearing to resolve any such points of difference.
- (b) The Monitoring Officer shall have the discretion to decide whether the hearing date should be changed and, subject to ratification by a resolution of the Committee or Sub-Committee conducting the hearing, whether any part of the hearing should be conducted in private or any part of the investigator's report or documents should be withheld from the public.
- (c) The Monitoring Officer shall prepare a written report summarising:-
 - (i) the complaint;
 - (ii) the investigator's report and findings;
 - (iii) the conduct of the pre-hearing procedure recording any facts which are not agreed, who will be present at the hearing and the witnesses to be called;
 - (v) the key issues to be determined by the hearing;
 - (vi) enclosing a copy of the adopted hearing procedure;

and he shall provide the Proper Officer with this report together with all relevant documents to be sent to the member, the complainant and members of the Committee/Sub-Committee together with an agenda for the meeting.

PROCEDURE FOR LOCAL DETERMINATION HEARINGS

1. Interpretation

- (a) 'Member' means the member or former member of a relevant authority who is the subject of the allegation being considered by the Committee, unless stated otherwise. It also includes the member's nominated representative.
- (b) 'Investigator' means the Ethical Standards Officer (ESO) who referred the report to the authority, and includes his or her nominated representative.¹
- (c) 'The Matter' is the subject matter of the investigator's report.
- (d) 'The Committee' refers to the Standards Committee or to any Standards Sub-Committee to which it has delegated the conduct of the hearing.
- (e) 'The Committee Support Officer' means an officer of the authority responsible for supporting the Committee's discharge of its functions and recording the decisions of the Committee.
- (f) 'Legal Advisor' means the officer responsible for providing legal advice to the Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.
- (g) 'The Chairman' refers to the person presiding at the hearing.

2. Modification of Procedure

The Chairman may agree to vary this procedure in any particular instance where he/she is of the opinion that such a variation is necessary in the interests of fairness.

3. Representation

The Member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the Committee, another person other than someone who will also be a witness. Note that the cost of such representation must be met by the Member, unless the Committee has expressly agreed to meet all or any part of that cost.²

4. Legal Advice

The Committee may take legal advice from its Legal Advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the Committee should be shared with the Member and the Investigator if they are present.³

5. Setting the Scene

At the start of the hearing, the Chairman shall introduce each of the members of the Committee, the Member (if present), the Investigator (if present) and any other officers

¹ In practice, the matter is referred by the ESO to the Monitoring Officer, who is then responsible for reporting the matter to the Committee. It is, therefore, convenient for the Monitoring Officer to conduct the pre-hearing process and to present the introductory report to the Committee at the commencement of the hearing.

² Once regulations are made under Section 100 of the Local Government Act 2000, authorities will have a discretion to provide an indemnity to Councillors in specified circumstances.

³ In the interests of openness, the Committee may prefer to receive any such advice in the main hearing room in the presence of the Investigator and the Member. Where this is not practicable, the Legal Advisor should repeat in the presence of the Investigator and the Member the advice which he/she has tendered.

present, and shall then explain the procedure which the Committee will follow in the conduct of the hearing.

6. **Preliminary Procedural Issues**

The Committee shall then deal with the following preliminary procedural matters in the following order:

(a) Disclosures of interest

The Chairman shall ask members of the Committee to disclose the existence and nature of any personal or prejudicial interests which they have in the matter, and to withdraw from consideration of the matter if so required.

(b) Quorum

The Chairman shall confirm that the Committee is quorate.⁴

(c) Hearing Procedure

The Chairman shall confirm that all present know the procedure which the Committee will follow in determining the matter.

(d) Proceeding in the absence of the Member

If the Member is not present at the start of the hearing:-

(i) the Chairman shall ask the Monitoring Officer whether the Member has indicated his/her intention not to attend the hearing;

(ii) the Committee shall then consider any reasons which the Member has provided for not attending the hearing and shall decide whether it is satisfied that there is sufficient reason for such failure to attend;

(iii) if the Committee is satisfied with such reasons, it shall adjourn the hearing to another date subject to its overriding duty to determine the Matter within three months;

(iv) if the Committee is not satisfied with such reasons, or if the Member has not given any such reasons, the Committee shall decide whether to consider the Matter and make a determination in the absence of the Member or to adjourn the hearing to another date.

(e) Exclusion of Press and Public

The Committee may exclude the press and public from its consideration of this Matter where it appears likely that confidential or exempt information will be disclosed in the course of this consideration.

The Chairman shall ask the Member, the Investigator and the Legal Advisor to the Committee whether they wish to ask the Committee to exclude the Press or public from all or any part of the hearing. If any of them so request, the Chairman shall ask them to put forward reasons for so doing and ask for responses from the others and the Committee shall then determine whether to exclude the press and public from all or any part of the hearing.

⁴ A meeting of the Committee is not quorate unless at least three Members of the Committee are present for the duration of the meeting. The three Members must include at least one Independent Member, unless an Independent Member would have been present but was precluded from participating in any of the business of the Committee in consequence of a prejudicial interest under the Council's Code of Conduct. If the Committee is responsible for Parish Council matters, it must include at least one Parish Council representative amongst its Members. However it is only a requirement that the parish representative is actually present when the Committee is dealing with a parish matter. Parish Sub-Committees, convened to deal with a parish matter, must have a parish representative as a Member of the Sub-Committee, but there is no requirement for him/her actually to attend the meeting for it to be quorate. [The Relevant Authorities (Standards Committee) Regulations 2001, Regulations 3 and 6. SI 2001 No. 2812].

Where the Committee does not resolve to exclude press and public, the agenda and any documents which have been withheld from the press and public in advance of the meeting shall then be made available to the press and public.

7. **A failure to comply with the Code of Conduct?**⁵

The Committee will then address the issue of whether the Member failed to comply with the Code of Conduct in the manner set out in the Investigator's report.⁶

- (a) The Chairman shall ask the Member to confirm that he/she maintains the position as set out in the pre-hearing summary.
- (b) The Pre-Hearing Process Summary

The Chairman will ask the Legal Advisor or the Committee Support Officer⁷ to present his/her report, highlighting any points of difference in respect of which the Member has stated that he/she disagrees with any finding of fact in the Investigator's report. The Chairman will then ask the Member to confirm that this is an accurate summary of the issues and ask the Member to identify any additional points upon which he/she disagrees with any finding of fact in the Investigator's report.

- (i) If the Member admits that he/she has failed to comply with the Code of Conduct in the manner described in the Investigator's report, the Committee may then make a determination that the member has failed to comply with the Code of Conduct in the manner described in the Investigator's report and proceed directly to consider whether any action should be taken (Paragraph 8).
- (ii) If the Member identifies additional points of difference, the Chairman shall ask the Member to explain why he/she did not identify these points as part of the pre-hearing process. He/she shall then ask the Investigator (if present) whether he/she is in a position to deal with those additional points of difference directly or through any witnesses who are in attendance or whose attendance at the hearing can conveniently be arranged. Where the Committee is not satisfied with the Member's reasons for failing to identify each additional point of difference as part of the pre-hearing process, it may decide that it will continue the hearing but without allowing the member to challenge the veracity of those findings of fact which are set out in the Investigator's report but in respect of which the member did not identify a point of difference as part of the pre-hearing process, or it may decide to adjourn the hearing to allow the Investigator and/or any additional witnesses to attend the hearing.

⁵ The model procedure recommended by the Standards Board suggests that the Committee should first determine findings of fact and then determine whether there has been a failure to comply with the Code of Conduct. I suggest that these two are so closely connected that the Committee may find that it can conveniently determine the two together without any loss of fairness.

⁶ Note that the Committee's consideration is limited to a possible failure to comply with the Code of Conduct in the terms set out in the Investigator's report. It is possible that, in the course of their consideration, the Committee apprehend that the Member may have failed to comply with the Code of Conduct in some other manner (for example that the Member's alleged failure to treat a person with respect appears also, or in the alternative, to be conduct likely to bring the Member's office or authority into disrepute). Note that such a possible additional or alternative failure will not, at that stage be able to be considered since the Member will not have had notice of the Committee's consideration of the possible additional or alternative failure and that it would therefore be unfair to proceed to consider that second matter at the hearing into the first alleged failure. Where the Committee do apprehend a possible additional or alternative failure, a failure by a different member, or a failure in respect of the code of conduct of another authority, they should refer the second matter to the Monitoring Officer with a view to a separate allegation being made to the Standards Boards for England.

⁷ As set out above, unless conflicted out, it is likely that the Monitoring Officer will:-

- (i) take on the conduct of the pre-hearing process;
- (ii) present an introductory report to the Committee at the commencement of the hearing setting out the outcomes of the pre-hearing process;
- (iii) will (if legally qualified) act as the Legal Advisor to the Committee; and
- (iv) will distribute and publish any required notices of the Committee's determination.

However, there may be reasons in particular cases for the Monitoring Officer to arrange for any or all of these functions to be carried out on his/her behalf.

- (c) Presenting the Investigator's report
 - (i) If the Investigator is present, the Chairman will then ask the Investigator to present his/her report, having particular regard to any points of difference identified by the Member and why he/she concluded, on the basis of his/her findings of fact, that the Member had failed to comply with the Code of Conduct. The Investigator may call witnesses as necessary to address any points of difference.
 - (ii) If the Investigator is not present, the Committee shall only conduct a hearing if they are satisfied that there are no substantial points of difference or that any points of difference can be satisfactorily resolved in the absence of the Investigator. In the absence of the investigator, the Committee shall determine on the advice of the Monitoring Officer which witnesses, if any, to call. Where such witnesses are called, the Chairman shall draw the witnesses attention to any relevant section of the Investigator's report and ask the witness to confirm or correct the report and to provide any relevant evidence.
 - (iii) No cross-examination shall be permitted but, at the conclusion of the Investigator's report and/or of the evidence of each witness, the Chairman shall ask the Member if there are any matters upon which the Committee should seek the advice of the Investigator or the witness.
- (d) The Member's response
 - (i) The Chairman shall then invite the Member to respond to the Investigator's report and to call any witnesses as necessary to address any points of difference.
 - (ii) No cross-examination shall be permitted but, at the conclusion of the Member's evidence and/or of the evidence of each witness, the Chairman shall ask the Investigator if there are any matters upon which the Committee should seek the advice of the Member or the witness.
- (e) Witnesses
 - (i) The Committee shall be entitled to refuse to hear evidence from the Investigator, the Member or a witness unless they are satisfied that the witness is likely to give evidence which they need to hear in order to be able to determine whether there has been a failure to comply with the code of conduct.
 - (ii) Any Member of the Committee may address questions to the Investigator, to the Member or to any witness.
- (f) Determination as to whether there was a failure to comply with the Code of Conduct
 - (i) At the conclusion of the Member's response, the Chairman shall ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to determine whether there has been a failure to comply with the code of conduct as set out in the Investigator's report.
 - (ii) Unless the determination merely confirms the Member's admission of a failure to comply with the Code of Conduct (as set out in Paragraph 6(b)(i) above), the Committee shall then retire to another room to consider in private whether the Member did fail to comply with the Code of Conduct as set out in the Investigator's report.
 - (iii) The Committee shall take its decision on the balance of probability based on the evidence which it has received at the hearing.

- (iv) The Committee's function is to make a determination on the matter. It may, at any time, return to the main hearing room in order to seek additional evidence from the Investigator, the Member or a witness, or to seek the legal advice from or on behalf of the Monitoring Officer. If it requires any further information, it may adjourn and instruct an officer or request the Member to produce such further evidence to the Committee.
- (v) At the conclusion of the Committee's consideration, the Committee shall consider whether it is minded to make any recommendations to the authority with a view to promoting high standards of conduct among Members.
- (vi) The Committee shall then return to the main hearing room and the Chairman will state the Committee's principal findings of fact and their determination as to whether the member failed to comply with the Code of Conduct as set out in the Investigator's report.

8. **If the Member has not failed to follow the Code of Conduct**

If the Committee determines that the Member has not failed to follow the Code of Conduct in the manner set out in the Investigator's report:

- (a) If the Committee apprehends, from the evidence which they have received during the hearing, that a member has failed to comply with the Code of Conduct (other than the Matter which the Committee has just determined), the Chairman shall outline the Committee's concerns and state that the Committee has referred this additional or alternative failure to the Monitoring Officer with a view to a further allegation being made to the Standards Board for England.
- (b) The Chairman should then set out any recommendations which the Committee is minded to make to the authority with a view to promoting high standards of conduct among Members and seek the views of the Member, the Investigator and the Legal Advisor before the Committee finalises any such recommendations.
- (c) Finally, the Chairman should ask the Member whether he/she wishes the authority not to publish a statement of its finding in a local newspaper.

9. **Action consequent upon a failure to comply with the Code of Conduct**

- (a) The Chairman shall ask the Investigator (if present, or otherwise the Legal Advisor) whether, in his/her opinion, the Member's failure to comply with the Code of Conduct is such that the Committee should impose a sanction and, if so, what would be the appropriate sanction.⁸

⁸ The sanctions which are available to the Committee under the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, Regulation 7, are any, or any combination, of the following:-

- "(i) censure of that Member;
- (ii) restriction for a maximum period of three months of that Member's access to the premises of the authority and that Member's use of the resources of the authority, provided that such restrictions imposed upon the Member –
 - (aa) are reasonable and proportionate to the nature of the breach; and
 - (bb) do not unreasonably restrict the Member's ability to perform his functions and duties as a Member.
- (iii) partial suspension of that Member for a maximum period of three months;
- (iv) partial suspension of that Member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Standards Committee;
- (v) suspension of that Member for a maximum period of three months;
- (vi) suspension of that Member for a maximum period of three months or until such time as he submits a written apology or undergoes any training or conciliation specified by the Standards Committee."

Any sanction imposed shall commence immediately unless the Committee direct (for any sanction other than censure) that it shall commence on any date specified by the Committee within six months of the date of the hearing. The effect of suspension is temporarily to deprive the Member of the benefits of any position within this authority from which the Member is suspended, for the duration of the suspension. Thus, during the period of suspension, a Member who is suspended from the Executive would lose any special responsibility allowances which he/she received as a Member of the Executive. A Member who is suspended in total would also lose any basic allowances for the duration of the suspension, and be unable to claim any travelling or subsistence allowances as they would not be incurring any such expenses in the discharge of their functions as a Councillor. But at the end of the period of suspension, the Councillor would automatically slot back into the positions which he/she held prior to the suspension, unless the Council had positively removed him/her from any such position in the meantime.

- (b) The Chairman will then ask the Member to respond to the Investigator's advice.
- (c) The Chairman will then ensure that each member of the Committee is satisfied that he/she has sufficient information to enable him/her to take an informed decision as to whether to impose a sanction and (if appropriate) as to the form of the sanction.
- (d) Any member of the Committee may address questions to the Investigator or to the Member as necessary to enable him/her to take such an informed decision.
- (e) The Committee shall then retire to another room to consider in private whether to impose a sanction, (where a sanction is to be imposed) what sanction to impose and when that sanction should take effect, and any recommendations which the Committee will make to the authority with a view to promoting high standards of conduct.
- (f) At the completion of their consideration, the Committee shall return to the main hearing room and the Chairman shall state the Committee's decisions as to whether to impose a sanction and (where a sanction is to be imposed) the nature of that sanction, and when it should take effect, together with the principal reasons for those decisions, and any recommendations which the Committee will make to the authority.

10. **The Close of the Hearing**

- (a) The Committee will announce its decision on the day of the hearing and provide the Committee Support Officer with a short written statement of their decision, which the Committee Support Officer will deliver to the Member as soon as practicable after the close of the hearing;
- (b) The Chairman will thank all those present who have contributed to the conduct of the hearing and formally close the hearing
- (c) Following the close of the hearing, the Committee Support officer will agree a formal written notice of the Committee's determination and the Monitoring Officer shall arrange for the distribution and publication of that notice (or a summary of that notice, where required) in accordance with Regulation 8 of the Local Authorities (Code of Conduct)(Local Determination) Regulations 2003.⁹
- (d) The notice to the Member shall include a statement as to the rights of the Member to seek permission to appeal from the president of the Adjudication Panel within 21 days of receipt of notification of the finding and shall provide the Member with the necessary appeal form.

⁹ Note that the summary will include:-

- (a) the name of the Member
- (b) the alleged failure to comply with the Code of Conduct
- (c) the finding of the Committee that the Member did or did not fail to comply with the Code of Conduct
- (d) the details of any failure
- (e) brief reasons for the finding
- (f) any sanction or other action determined or recommended
- (g) a statement that the Member has a right of appeal

ADMISSION OF PRESS AND PUBLIC TO STANDARDS COMMITTEE DETERMINATION HEARINGS

The Standards Board for England recommends that hearings should be held in public where possible to make sure that the hearing process is open and fair. However, there may be some circumstances where parts of the hearing should be held in private.

- 1 At the hearing, the Committee will consider whether or not the public should be excluded from any part of the hearing, in line with Part VA of the Local Government Act 1972 (as modified in relation to local determinations by Standards Committees). If the Committee considers that 'confidential information' is likely to be revealed during the hearing, the Committee must exclude the public by law. 'Confidential information' is defined for these purposes to mean information that has been provided by a Government department under the condition that it must not be revealed, and information that the law or a court order says cannot be revealed.
- 2 The Committee also has the discretion to exclude the public if it considers that 'exempt information' is likely to be revealed during the hearing. The categories of 'exempt information' are set out below. The Committee should act in line with Article 6 of the *European Convention on Human Rights*, which gives people the right to a fair trial and public hearing by an independent and unbiased tribunal. The Committee also has a duty to act fairly and in line with the rules of natural justice.
- 3 Article 6 says that the public may be excluded from all or part of the hearing if it is in the interests of:-
 - (a) Morals;
 - (b) public order;
 - (c) justice;
 - (d) natural security in a democratic society; or
 - (e) protecting young people under 18 and the private lives of anyone involved.
- 4 There should be a public hearing unless the Committee decides that there is a good reason, which falls within one of the five categories above (3a to e), for the public to be excluded.
- 5 The Committee must also act in line with Article 10 of the *European Convention on Human Rights*, which sets out the right for people to 'receive and impart information and ideas without interference by public authority'. Any restrictions on this right must be 'prescribed by law and.....necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary'.
- 6 Conflicting rights often have to be balanced against each other. The Committee must act in line with Article 8 of the *European Convention on Human Rights*. Article 8 says that everyone has the right to respect for their private and family life, home and correspondence. It says that no public authority (such as the Committee) may interfere with this right unless it is:-
 - (a) in line with the law; and
 - (b) necessary in a democratic society in the interests of:
 - (i) national security;
 - (ii) public safety;
 - (iii) the economic well-being of the country;
 - (iv) preventing crime or disorder;
 - (v) protecting people's health and morals (which would include protecting standards of behaviour in public life); or
 - (vi) protecting people's rights and freedoms.

There is a clear public interest in promoting the probity (integrity and honesty) of public authorities and public confidence in them. For these reasons the hearing should be held in

public unless the Committee decides that protecting the privacy of anyone involved is more important than the need for a public hearing.

- 7 In relation to people's rights under both Articles 8 and 10 of the *European Convention on Human Rights*, it should be remembered that any interference with or restriction of those rights must be 'necessary' and must meet 'a pressing social need', and any restriction on people's rights must be 'proportionate'.
- 8 The Standards Board for England recommends that a Standards Committee should move to a private room when considering its decisions. This will not conflict with the rights under the *European Convention on Human Rights* or the duty to act fairly.

**CATEGORIES OF EXEMPT INFORMATION UNDER SCHEDULE 12A OF THE LOCAL
GOVERNMENT ACT 1972 (AS MODIFIED IN RELATION TO LOCAL DETERMINATIONS BY
STANDARDS COMMITTEE)**

1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder appointed by:-
 - (a) a magistrates' court committee;
 - (b) a probation committee within the meaning of the Probation Service Act 1993; or
 - (c) a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
- 2A. Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.
9. Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.
11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with:-
 - (a) any legal proceedings by or against the authority; or
 - (b) the determination of any matter, affecting the authority;(whether in either case, proceedings have been commenced or are in contemplation).

13. Information which, if disclosed to the public, would reveal that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.
15. The identity of a protected informant.
16. Information relating to the personal circumstances of any person.
17. Information which is subject to any obligation of confidentiality.
18. Information which relates in any way to matters concerning national security.
19. The deliberations of a Standards Committee or a Sub-Committee of a Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 64(2) or 71(2) of the Local Government Act 2000.

STANDARDS COMMITTEE

9 MARCH 2004

REPORT OF THE MONITORING OFFICER

**DRAFT GOOD PRACTICE PROTOCOL FOR
COUNCILLORS DEALING WITH PLANNING MATTERS**

Introduction

1. In 2002 this Committee accepted my recommendation that the Council should adopt a Protocol of good practice for Councillors dealing with planning matters. Since that time several factors have conspired to delay the preparation of a draft protocol, including other commitments, delay in the Standards Board issuing guidance on some of the issues relevant to the Protocol, and a recent run of court cases on matters highly relevant to members' interests.
2. Attached to this report is a draft Protocol which sets out not only the recommended good practice but also the background, the need for and aims and scope of the Protocol and methods by which compliance should be monitored.

Handling

3. The draft Protocol has been the subject of consultation with Management Team and the Strategic Planning Manager. However further and more detailed consultation would be appropriate, including seeking the formal views of the Executive (who exercise some planning related functions of the Council) and the Planning Committee. The Planning Committee may well wish me to give a short presentation on the Protocol. It is suggested therefore that the draft Protocol – incorporating the views of this Committee – should be subject to this further consultation, then reported back to a future meeting of this Committee for final approval before being passed to full Council for formal adoption. The Protocol should be included within the Council's Constitution but not as part of the Council's Code of Conduct.

Monitoring of Protocol

4. The draft Protocol sets out the proposed method of monitoring. In so far as a complaint of a breach of the Protocol is or is reasonably considered by a Councillor to be a breach of the Council's Code of Conduct the matter must be referred to the Standards Board for England. Complaints of substantial breaches of the Protocol which are not breaches of the Code of Conduct should be referred to this Committee for consideration. [This is already catered for in the terms of reference of the Committee]. The sanctions of the Committee are necessarily limited by law. However, it is hoped that formal monitoring in itself will encourage full adherence to the Protocol. The ultimate step, should the Protocol prove ineffective, would be for the Council to consider adopting it as part of the Council's Code of Conduct so that the full sanctions of the Standards Board procedures would apply. I have no reason to suppose that this will prove necessary.

Delegation to Planning Officers

5. In the course of preparing the draft Protocol I have noted the need for an important change to the terms on which ward councillors (in conjunction with parish councils in parished areas)

can request planning decisions to be elevated to the Planning Committee. At present the grounds on which such requests can be made are expressed to be based on “the ward councillor’s view as to whether to permit or refuse the application are at that time at variance with the officer’s view”. This is inappropriate bearing in mind the need for ward councillors who are also members of the Planning Committee to retain open minds until they have received and heard all relevant information on an application. I therefore suggest the terms of the provision be amended as set out in the recommendation below.

Recommendations

1. The draft Protocol be approved for further consultation with the Strategic Planning Manager, the Executive and the Planning Committee.
2. A further report be submitted to this Committee upon the outcome of the consultation.
3. The Council is recommended to amend the terms on which ward members may request elevation of delegated planning decisions to the Planning Committee so that the ground for the request is that the ward member “considers the application raises issues of significant local importance”.

**ASHFORD BOROUGH COUNCIL
GOOD PRACTICE PROTOCOL FOR COUNCILLORS
WHEN DEALING WITH PLANNING MATTERS**

BACKGROUND

1. In May 2002 the Borough Council adopted a new Code of Conduct for Councillors. That code applies at all times to all Councillors not just in relation to planning matters. However, some provisions of the Code of Conduct are of special importance in the planning process. In addition to the Code of Conduct there are other legal and procedural rules which must be followed by Councillors when dealing with planning matters. In particular decisions on planning matters must avoid bias or even the appearance of bias which is just as damaging to public confidence in the planning system.
2. The Local Government Association (LGA) recommend that Councils should adopt local protocols of good practice to supplement the statutory Code of Conduct and to assist Councillors in ensuring all planning decisions are well founded and reached impartially. In 1997 the Nolan Report on Standards in Public Life found that:

“Not everyone will understand or abide by rules of conduct. Indeed since huge profits may turn on a planning application, the risks may be greater there than elsewhere. A robust and effective system of checks and balances should be put in place to reassure the public that misconduct is kept to a minimum”.
3. The Council’s Code of Conduct goes some way to meeting this objective. However it is appropriate that the Code should be supplemented by this more detailed good practice Protocol focussing only on planning matters. It has been prepared taking account of the LGA publication “*Probity in Planning*” (2002), and guidance from ACSeS (Association of Council Secretaries and Solicitors) which itself was produced in consultation with the Standards Board for England, the Audit Commission and the Local Government Ombudsman

AIM AND SCOPE OF THIS PROTOCOL

1. The purpose of this Protocol is to support and assist the Borough Council in the proper discharge of its functions as planning authority and to ensure there are no grounds for suggestion that a decision has been biased or otherwise not well founded. This applies whether those functions are being discharged by Officers, the Executive, the Planning Committee or the Council.
2. This Protocol applies to all Borough Councillors at all times when dealing with planning matters or involved in planning decisions. Therefore it applies not only to decisions on planning applications in Planning Committee meetings but also, for example, to decisions on enforcement and preparation of the development plan. It should also be followed on less formal occasions such as meetings with Officers or the public or consultative meetings.
3. This Protocol does not apply to parish councillors although it would be good practice for them to act in accordance with it when they deal with planning matters. However parish councillors who are also members of the Borough Council’s Planning Committee must be conscious of the need to avoid the appearance of bias when they consider a planning matter at parish council level. This is dealt with in more detail in Section B of the Protocol ‘Retaining an Open Mind’ under the sub-heading ‘Dual Role Councillors’.
4. This Protocol is not part of the Borough Council’s adopted Code of Conduct. However, breach of this Protocol may in some circumstances also amount to a breach of the Code of Conduct. Therefore a breach of this Protocol may result in a complaint to the Standards Board for England. Other breaches of the Protocol which do not amount to breaches of the Code can be the subject of complaint to the Monitoring Officer and consideration by the

Borough Council's Standards Committee. The issue of monitoring of this Protocol is dealt with below.

5. Members should also be aware that breach of this Protocol could place the Council at risk of Court proceedings as to the legality of a decision or a complaint of maladministration to the Ombudsman. Thus a breach could have serious consequences for the Council as well as personal consequences for the councillor.
6. IT IS THEREFORE IMPORTANT THAT IF ANY COUNCILLOR HAS DOUBTS ABOUT THE APPLICATION OF THIS PROTOCOL TO HIS OR HER OWN CIRCUMSTANCES, ADVICE SHOULD BE SOUGHT FROM THE MONITORING OFFICER OR HIS STAFF AS EARLY AS POSSIBLE IN ADVANCE OF ANY MEETING TAKING PLACE.
7. All references in this Protocol to 'he' or 'his' should be taken to include 'she' or 'her' and vice versa.

MONITORING OF THIS PROTOCOL

1. This Protocol is part of the Council's Constitution. It is not however part of the Council's Code of Conduct. Any person whether an officer, councillor or member of the public, may make a written complaint to the Monitoring Officer that there has been a substantial failure to comply with the terms of this Protocol.
2. In the event that such a complaint amounts to a complaint that the Council's Code of Conduct has been breached (for example because an interest has not been declared) the complainant will be advised that the complaint should be passed in writing to the Standards Board for England.
3. In other cases of complaint, unless the Monitoring Officer in consultation with the Chairman and Vice-Chairman of the Standards Committee decides the complaint is groundless or trivial, the complaint will be referred to the Standards Committee or Sub-Committee for consideration. The Committee or Sub-Committee will be presented with the complaint as soon as a meeting can be convened, together with a report from the Monitoring Officer thereon and any written submissions from the Councillor(s) the subject of the complaint. In exceptional cases the Committee or Sub-Committee may consider it necessary to allow the complainant and/or the councillor(s) to make oral statements.
4. The Standards Committee will determine whether there has been a material breach of the Protocol. There will be a presumption that such meetings will be held in public and the findings should be published in the same way as local determination findings under the Code of Conduct provisions. If they determine there has been such a breach they may do all or any of the following:-
 - (a) censure the councillor
 - (b) request the councillor to undergo further training or instruction
 - (c) in the case of persistent or breaches request that consideration be given by a group leader to removing or not appointing the councillor(s) to the Planning Committee whether for a specific period or not and subject to such terms or conditions as they think fit eg only if the councillor refuses to undertake further training.

THE PROTOCOL OF GOOD PRACTICE

A. COUNCILLORS' INTERESTS UNDER THE COUNCIL'S CODE OF CONDUCT

1. Paragraph 5 of the Council's Code of Conduct provides that

“A Member –

(a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself or any other person an advantage or disadvantage”.

2. Under Paragraph 8 of the Council's Code of Conduct a Member has a PERSONAL INTEREST in any matter if

(a) the matter relates to a financial or other interest which has to be registered with the Monitoring Officer (this is the interests form which all Councillors have filled in containing details of employment, share interests, land/home ownership, membership of outside bodies, charities etc) or

(b) a decision upon it might reasonably be regarded as affecting to a greater extent than other Council tax payers or ratepayers the well-being or financial position of himself, a relative or friend

- or any employment or business carried on by such persons
- any employer of such persons
- any body in which such persons have shares or securities exceeding £5,000 nominal value
- any public, or charitable or similar body in which such persons hold a position of general control or management.

3. These provisions apply when councillors are dealing with planning matters, as well as all other matters. They apply to all councillors whether or not they are members of the Planning Committee. A member with a PERSONAL interest must disclose that interest and the nature of it at the commencement of consideration of that matter. This applies even to a councillor who is only attending a meeting to listen to a debate or speak upon a planning matter as a non-voting councillor. However councillors should take care not to disclose excessive detail about the interest as this may be considered as improper lobbying. For example a member would meet his obligation by saying “I wish to disclose a personal interest in that I have a relative who lives near the site and would be affected by the development”. The same member may be accused of improperly seeking to influence a decision by adding “and the amenity of her home would be seriously damaged if this development went ahead”.

4. A member who has a PERSONAL interest may, after properly declaring it, speak (and if applicable vote) on a matter provided it is not also a PREJUDICIAL interest. A PREJUDICIAL interest is one which

“a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgement of the public interest”.

5. Under paragraph 12 of the Council's Code of Conduct a member with a PREJUDICIAL interest in a matter must withdraw from the meeting room altogether and not take any part in the decision or seek improperly to influence the decision, for example by lobbying colleagues.

6. It is not always easy to decide whether an interest is prejudicial. It is important that advice is sought from the Monitoring Officer as early as possible in cases of doubt, although the ultimate decision and responsibility rests firmly with the councillor. However, by way of illustration the following situations are likely to constitute prejudicial interests:
- a planning decision relating to a councillor's own land or business or the land or business of a relative, friend etc.
 - a planning decision materially affecting a councillor's land or the land of a relative, friend etc.
 - a planning decision on an application made by or objected to by a body or authority on which the councillor, a relative or friend serves or in which such a person has a material beneficial interest.
7. A 'relative' is defined in the Council's Code of Conduct as including a spouse, partner, parent, child, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece or spouse or partner of any of these. Unfortunately "friend" is not defined but it is likely to be interpreted as something more than an acquaintance. Certainly a person with whom a councillor is friendly in a regular social sense should be regarded as a 'friend'.
8. Mere membership of the same political group or party of itself will not constitute an interest. However, if in addition a political colleague is a 'friend' in the sense referred to above then this is likely to be a declarable interest.
9. Although the Council's Code of Conduct allows a councillor in limited circumstances to participate in a decision despite the existence of a prejudicial interest, this provision must be treated with extreme caution in the context of planning decisions. Paragraph 10 of the Council's Code of Conduct states that a member may regard an interest as non-prejudicial if it relates to another public authority of which he is a member or a body to which he has been appointed by the Council. However, a planning application by such a body must be determined and be seen to be determined impartially and without bias. Therefore any councillor who is a member of a public body or authority or a nominated representative on a body making a planning application to the Borough Council should declare a prejudicial interest and take no part in a decision upon it.
10. A councillor who has a prejudicial interest in a planning matter must not speak, vote or remain in the room during the decision-making process. A councillor with a prejudicial interest cannot use public speaking rights and address the Committee as an ordinary member of the public. This means the councillor will be unable to represent the views of constituents on the matter. It is important therefore that as early as possible the councillor makes arrangements for constituents' views to be channelled through another councillor. The councillor with the prejudicial interest may only make his personal views known on a matter by writing to the Strategic Planning Manager in his or her capacity as a local resident. He should not seek to influence the outcome by lobbying colleagues or seeking to put his own views forward through another councillor.
11. Summary:

DO take advice from the Monitoring Officer or one of his staff as early as possible in cases of doubt.

DO disclose interests in accordance with the above rules at meetings of committees and also at informal meetings and discussions with officers or other members.

DO then act accordingly and if the interest is prejudicial take no part in the decision, leave the room and do not seek to influence the decision other than by writing to the Strategic Planning Manager in your capacity as a local resident.

DO NOT lobby fellow councillors or seek to put your own views through a fellow councillor on matters where you have a prejudicial interest

DO NOT try to represent ward/local views if you have a prejudicial interest. Arrange with another Councillor to do so instead.

DO NOT express your own views or represent the views of another public authority or body to which you have been appointed if that authority or body is the applicant for permission or would otherwise be directly affected by the decision.

B. RETAINING AN OPEN MIND AND AVOIDING BIAS

1. Planning decisions must be taken fairly on the basis of all relevant information and ignoring any factors which are not relevant. Under Section 54A of the Town and Country Planning Act 1990 all planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise.
2. In effect this means that members of any Committee making planning decisions must not commit themselves to speaking and voting for or against a particular matter in advance of hearing all the information relevant to the decision (and must not be seen to do so). These principles apply equally to members who substitute for Planning Committee members at any meeting. It is only after reading an officer's report and considering all the views which have been put forward both before the meeting and during the debate that a member of the Committee should determine his stance on a particular matter. The strength of public opinion for or against a particular proposal is but one of the material considerations. A councillor's overriding duty is to the whole community not just to ward constituents or any particular view held by them. A single biased councillor will be sufficient to render a decision unlawful no matter how many unbiased councillors take part in the decision or vote in a particular way.
3. A member of a decision-making Committee on a planning matter must always be seen to retain an open mind on a matter prior to formal consideration at a meeting. If a councillor is seen to have predetermined his view and fettered his discretion and then takes part in the decision it will put the Council at risk of a maladministration complaint or legal proceedings on the grounds of the decision being tainted with bias. If a member of the Planning Committee decides in advance that he is bound to take a particular view on an application (for example because it is so controversial with constituents in his ward) or acts in such a way that it amounts to the same thing then that will preclude the councillor from voting on the matter at the relevant meeting. In effect the councillor has to choose between publicly supporting or opposing a particular application and retaining his ability to participate in the decision itself at Committee. However a councillor will not have fettered his discretion merely by listening to and receiving representations from residents or interested parties, making comments to such people or being a vehicle for the expression of local opinion at a Committee meeting provided he makes it clear that he himself is not already committed to voting in accordance with those views.
4. The principle of Committee members retaining an open mind is of considerable importance in many common situations. Each of these is dealt with in turn below although there is inevitably some overlap between the various sub-headings:

- (a) Lobbying: lobbying of Planning Committee members by applicants, objectors etc is a perfectly proper part of the democratic process. However, members' response to approaches by applicants, objectors or other members of the public is of critical importance if they are not to be seen to have pre-judged an application. Accordingly when approached, Planning Committee members should never commit themselves to speak or vote in any particular manner or express such a firm point of view that it amounts to the same thing. In practice members can respond by saying they understand the person's views and that whilst they can report that view to the Committee they cannot commit themselves until they have addressed their minds to the full range of information at the Committee. Members may also advise that the person's best interests would be served by putting their views in writing to the relevant planning officer who will include them as part of a formal report to members or be obliged to take them into account if the decision is taken under delegated powers.
- (b) Meetings with Applicants, Objectors etc: individual members of the Planning Committee should not attend private meetings with applicants or groups of objectors. Such meetings, if considered helpful in order to clarify issues, should be arranged by or attended by relevant planning officers as well so that those present at the meeting can be advised from the outset that the discussions will not bind the authority to any particular course of action and to ensure the meeting is properly recorded on the application file and disclosed when the matter is reported to Committee. The same principle applies to formal presentations which are sometimes requested by applicants particularly on very major proposals. Such presentations are a form of lobbying and Planning Committee and whilst members at such events may quite properly ask questions and seek clarification about the proposals they should not express strong views or indicate how they are likely to vote when the matter comes before the Committee.
- (c) Dual Role Councillors: members of the Borough Council's Planning Committee may also be members of other bodies/authorities who are consultees on a particular planning proposal eg an amenity society or a parish council. It is important that councillors wishing to retain their ability to take part in the ultimate decision at the Borough Council's Planning Committee do not fetter their discretion if they take part in consideration of the matter at an earlier stage when the consultee body forms its view on the matter. Such 'dual role' councillors should therefore make it clear to the consultee body that any view they express on the matter is on the basis of the more limited information before that body and they do not commit themselves to vote in a particular way when the matter comes before the Borough Council's Planning Committee and when fuller information and a full report will be available. Such councillors should then declare a personal interest regarding membership of that consultee body when the matter comes before the Borough Council's Planning Committee (this should be done at the beginning of the meeting and there is a standing item on each agenda to facilitate this).
- (d) Ward Councillors: Planning Committee members who are ward councillors for major or controversial planning proposals are in a particularly difficult situation. Lobbying by objectors may be particularly strong. If a ward councillor who is a member of the Planning Committee decides that he must publicly take a particular position on an application in advance then that will preclude the councillor from voting on the matter but he – with the agreement of the Chairman – would still be permitted to speak at the Committee but should do so not from the normal members seating area but from the public speaker position and his reason for doing so should be explained to the Chairman.
- (e) Action Groups: local residents sometimes form action groups specifically to support or oppose particular planning proposals. The participation of or association with such groups by members of the Planning Committee requires particular care. Membership

or active participation will give the appearance a member is committed to the aims of the group and therefore to a particular view on the application. Membership would also need to be registered on the interest form as an organisation seeking to influence public opinion and is therefore likely to give rise to a prejudicial interest when the matter comes before Committee, as well as giving the clear impression of bias. Accordingly a member of the Planning Committee would have to choose between being a member of or supporting such a group or participating in the Planning Committee decision. A councillor should not do both. This would not of course preclude the Councillor from receiving the views of the group. Attendance at any meetings of the group would be inadvisable unless it is a public meeting and attendance is on the express basis of listening only and not being committed to vote on the matter in a particular way until all the evidence is to hand.

- (f) Group Whips: Planning decisions must be made on the basis only of material planning considerations. Both the Ombudsman and the courts have ruled that a decision on a planning matter is unreasonable and unlawful if a councillor is blindly toeing a party line on a particular matter. The Ombudsman has expressed the view that a party whip on a planning decision can in itself amount to maladministration since it potentially removes councillors' ability to make balanced decisions based only on material planning factors. Councillors must not have closed minds on planning decisions, whether on the grounds of party loyalty or otherwise.
- (g) The "Advocate" role: A member of the Planning Committee should not speak or vote on a planning matter if he has become so associated with a particular proposal as to be regarded as an advocate for it. This could arise, for example, when the Council itself is the applicant for consent and the councillor has taken a significant role – beyond ordinary membership of another relevant Council Committee – in proposing or advocating the proposal. It may also arise, for example, in relation to any proposal which has been positively promoted or supported by another body on which the Council is represented by a member of the Planning Committee eg: any outside body including Ashford's Future Delivery Board.
- (h) Gifts and Hospitality: Under the Council's Code of Conduct every councillor must within 28 days of receiving any gift or hospitality over the value of £25 provide written notification to the Monitoring Officer of the existence and nature of the gift or hospitality. This applies at all times, not just in relation to planning matters. However, any offer or acceptance of a gift or hospitality as an inducement or reward for any action a councillor may take as a member is prima facie corruption and could lead to criminal prosecution. The sensitivity of planning decisions means members must avoid accepting any gift or hospitality from an applicant supporter or objector to any current planning proposal and should take particular care in relation to offers which may be motivated or seen to be motivated by possible future planning proposals. Any councillor who considers he has been exposed to inappropriate offers of gifts or hospitality should inform the Monitoring Officer immediately.
- (i) Referring Delegated Planning Decisions to Planning Committee: Planning officers have delegated powers to determine most planning applications. However, the Council's Constitution allows ward councillors (in conjunction with parish councils in parished areas) to request in writing that determination of an application be elevated to the Planning Committee. It is important that a ward councillor who is a member of the Planning Committee so requesting does not do so on grounds which suggest he has a pre-determined view on the matter. The Constitution therefore provides that, whatever a parish council's reason for requesting elevation, the ward councillor's request should be solely on the basis that he considers the application raises "issues of significant local importance".
- (j) Ward Councillors as Consultees on Planning Matters: ward councillors who are also members of the Planning Committee should not express firm views on planning

applications as consultees in advance of formal consideration of an application (eg by writing to the planning case officer). If he does so he is likely to be regarded as having fettered his discretion and unable to participate if the application is reported to Committee. In the event a ward councillor does express a firm view in the belief that the matter will be determined under delegated powers and it is subsequently elevated to the Planning Committee the ward councillor will be regarded as biased and unable to vote on the matter unless he has made it clear that his view as a consultee is on the basis of currently available information and he is not committed to that view in the event that further information becomes available eg through a Committee report.

5. Summary:

As a Planning Committee member (and this includes any councillor substituting for such a member):

DO retain an open mind on all matters coming before the Committee and be aware of the wide range of circumstances in which there is a risk of fettering discretion precluding you from participating in Planning Committee decisions.

DO NOT speak or vote on matters where you have fettered your discretion in any of the circumstances described above unless you are a ward member and you follow the guidance in (d) above.

DO base your judgements only on material planning considerations and not factors such as party loyalty.

DO follow the guidance set out above if you are lobbied or asked to attend meetings with applicants, objector's groups etc.

DO take particular care not to be seen to form a final view on planning matters when they come before other bodies of which you are a member eg parish councils, amenity societies.

DO NOT join or become identified with any pressure group formed for the purpose of promoting or opposing specific planning proposals unless you wish to do so in preference to taking part in the Planning Committee decision.

DO NOT accept gifts or hospitality from applicants or objectors to current planning proposals.

DO NOTIFY the Monitoring Officer if you consider you have been subjected to inappropriate lobbying or offers of gifts or hospitality.

DO NOT allow members of the public to communicate with you during the Planning Committee proceedings (including passing of notes) other than through the scheme for public speaking as this will give the appearance of bias.

DO make it clear if responding to consultation letters as a ward councillor that your view is on the basis of information currently available and you are not committed to the view in the event that further information (eg by way of a report to Committee) becomes available.

DO NOT request a delegated decision to be elevated to the Planning Committee on any ground other than that you consider the matter raises issues of significant local importance.

C. PLANNING SITE VISITS

1. Site visits must be treated as part of the Planning Committee's consideration of a planning application. They are intended to enable members to evaluate the nature and impact of proposed development and are subject to the same restrictions as ordinary meetings of the Committee. This means:
 - (a) members should disclose personal interests either to the Chairman or a member services officer before the site visit commences.
 - (b) no councillor with a prejudicial interest or whose presence would give rise to bias or the appearance of bias should attend a site visit.
2. The Council has approved a guidance note for member site visits prior to determination of planning applications. For ease of reference a copy of that note is attached to this Protocol. The guidance note should be followed at all times by members.
3. It is important to avoid any appearance of bias which could arise by entering an application site other than as part of an official site visit, even in response to an invitation. If a Planning Committee member considers it essential to enter a site other than through an official site visit then the Strategic Planning Manager should be informed of the intention and reasons for doing so, so these can be recorded on the relevant file. The principles of the Guidance Note on site visits should then be adhered to.
4. Summary:

DO declare personal interests in relation to site visits in the same way as you would at the Committee meeting itself.

DO NOT attend a site visit if you have a prejudicial interest in the relevant application or if you have fettered your discretion on the application in any of the ways described in the previous section of this Protocol.

DO follow the Council's Guidance Note in relation to site visits.

DO NOT enter planning application sites on 'unofficial' visits unless you comply with the rules set out in paragraph 3 above.

D. THE COUNCIL'S OWN APPLICATIONS

1. The law allows the Council to determine many of its own planning applications. This inevitably gives rise to problems of public perception and there can also be internal tensions in that a member of the Planning Committee may have been involved in the service decision to seek planning permission or as a portfolio holder or otherwise may have become closely identified with supporting a particular project.
2. The Council is a single legal entity and the fact that a member has been involved in the decision to seek planning permission does not of itself give rise to a personal or prejudicial interest when the matter comes before the Planning Committee.
3. However the rules on bias do still apply. In taking the decision to apply for planning permission members must recognise that the application has still to be considered on its planning merits and the decision to seek planning permission does not in any way commit the Planning Committee to grant permission.

4. A member of the Planning Committee should not participate or be present during the consideration of a planning application if they have previously committed themselves on the planning merits of the proposal or if they have become so associated with it as to be reasonably regarded as an advocate for it (see Section B under ‘Advocate Role’).
5. Summary:

DO be aware that you may usually fully participate in planning decisions at the Planning Committee on the Council’s own applications even if you were part of a service decision to seek planning consent.

DO NOT take part, however, if at the service Committee or otherwise you have committed yourself on the planning merits of the proposal or publicly advocated the proposal.

E. A COUNCILLOR’S OWN PLANNING APPLICATION

1. Particular care is needed when a Councillor applies for planning permission on his own behalf. On occasions following recommended good practice may mean a councillor is treated differently and less advantageously from other applicants for planning permission.
2. It is good practice for a councillor to notify the Monitoring Officer of his/his partner’s intention to submit a planning application. The Monitoring Officer can then ensure that the proper internal procedures are followed including the reporting of such applications to Committee regardless of whether they would otherwise fall to be determined under officer delegated powers.
3. The applicant councillor, whether or not a member of the Planning Committee, will clearly have a prejudicial interest and cannot participate in the decision-making process or attend the relevant part of the meeting. The Councillor cannot himself make use of the public speaking facility although he can arrange for an agent to do so on his behalf.
4. The councillor must take particular care not to lobby any officer or member of the Planning Committee in respect of the application as this is likely to be regarded as improperly seeking to secure an advantage in breach of the Council’s Code of Conduct. The Ombudsman has advised that councillors should not normally seek personal meetings or undertake personal discussions with officers regarding their own applications. They should appoint an agent to do so.
5. Any member of the Planning Committee – or indeed any other councillor who may wish to speak on the application - who is a “friend” of the applicant member will have a personal interest in the matter which must be declared at the Planning Committee. The interest will also be prejudicial (which would preclude any participation at all in the decision) if the friendship is so close that a member of the public, informed of the facts, might reasonably conclude that it was likely to affect the manner in which the member would speak or vote on the matter. Membership of the same political group or party on its own will not be sufficient to amount to a personal or prejudicial interest.
6. Summary:

DO notify the Monitoring Officer of your/your partner’s intention to submit a planning application to the Council.

DO NOT take any part in the decision-making process on your own applications or those of a fellow Councillor who is a close “friend”.

DO NOT seek to influence officers or other Councillors on applications in which you have a prejudicial interest.

DO appoint an agent to undertake negotiations and discussions with Officers in relation to your own applications.

F. OTHER SENSITIVE APPLICATIONS

1. The Council's own applications and applications by councillors will always be reported to Planning Committee for decision even if the proposals are such that they would normally fall to be dealt with by officers under delegated powers.
2. On occasions there will be other types of application which are considered sensitive and which should be dealt with in the same way. These include applications by officers, some applications by ex-Councillors (for example by former councillors who have served recently or are otherwise still well known political figures) and, exceptionally, some applications by former officers. In such cases the officer reports will make clear the reasons for bringing the matter before Committee.
3. In all such cases Members must be aware of the potential public sensitivity of decisions and be aware of the need to declare personal (and where appropriate prejudicial) interests if applicants are "friends".
4. Summary:

DO be aware of the need to consider and declare personal (and prejudicial) interests in accordance with the normal rules where applications by Councillors, ex-Councillors, officers etc are reported to Planning Committee for decision.

G. RELATIONSHIPS WITH OFFICERS

1. Planning officers preparing reports and recommendations for Committee decision (and making delegated planning decisions) are subject to rigorous professional duties under conduct codes monitored by their professional body the Royal Town Planning Institute. Members must be aware of and respect these duties. They include the following duties:

"to fearlessly and impartially exercise independent professional judgement to the best of their skill and understanding" and "not to make or subscribe to any statements or reports contrary to their own bona fide professional opinion".

They are accordingly under a professional duty to make recommendations solely in accordance with their professional judgement.
2. The Council's Code of Conduct provides at paragraph 2 (c) that a member must not

"do anything which compromises or which is likely to compromise the impartiality of those who work for or on behalf of the authority".
3. It follows from the above that councillors must not put pressure on officers or their managers to put forward a particular recommendation even if the officers professional judgement is at variance with the views of the councillor. This does not prevent a councillor asking questions or submitting views to the planning officer although a councillor who is also a member of the

Planning Committee must take care not to express opinions which indicate a pre-determined view.

4. Summary:

DO be aware of and respect the planning officer's professional duties.

DO NOT seek to improperly influence an officer's report on a planning matter or delegated decision by putting pressure on him or his manager to make a particular recommendation or decision.

H. **DECISIONS AGAINST OFFICER ADVICE**

1. On occasions the Planning Committee will wish to determine an application contrary to the recommendation of officers. This is perfectly proper provided the Committee is able to substantiate its decision with proper planning reasons. A failure to do so could lead to an appeal and the award of costs against the Council.
2. The Council's Constitution provides certain safeguards in the event that the Committee wishes to reach a decision against officer advice. With some exceptions, Committee proposals to make decisions contrary to advice and contrary to established development plan or other policies automatically stands referred to the next Planning Committee meeting. This allows time for reflection by members and an opportunity for officers to provide any additional relevant information. Furthermore at the second meeting when the matter is reconsidered there is an opportunity for any five members of the Planning Committee to request the application be referred to full Council for consideration.
3. Regulations introduced in December 2003 require the Council to indicate the reasons for decisions on the formal decision notice. In the case of Planning Committee decisions to grant permission contrary to advice this means that members must specifically address their minds to and formulate the reasons for the permission prior to voting and not be tempted to leave it to Officers to draft reasons at a later stage. The reasons so given will then be included not only in the Committee minutes but also on the relevant decision notice. Similarly if it is moved and seconded that an application be refused contrary to officers' advice, then the reasons for the proposal to refuse planning permission must be clearly formulated before the matter is voted upon.
4. Summary:

DO be aware of the need to give sound planning reasons for all decisions and where acting contrary to advice the need to formulate detailed reasons at the time of the decision and prior to the vote so the same may be included in formal decision notices.

GUIDANCE NOTE

MEMBER SITE VISITS PRIOR TO DETERMINATION OF PLANNING APPLICATIONS

1. Background

In determining planning applications the Council is acting in a quasi-judicial capacity and as a matter of law it must act fairly throughout the determination process and observe the rules of natural justice at all times. In recognition of this position, the Council has adopted a procedure for all site visits made prior to the determination of a planning application. The procedure, set out below, takes account of the Council's obligations under the Human Rights Act to ensure equal treatment as between applicants and objectors throughout the decision-making process.

2. Site Visit Procedure

- (a) The normal practice will be for Officers to obtain an applicant/landowner's agreement to a Members' site visit taking place on his/her land. Other persons invited to attend will be a Parish Council representative and the Ward Member (if not a Member of the Committee). In addition relevant Council Officers will attend. Neighbours will be contacted and informed of the arrangements only where it is thought likely that Members will wish to enter their land as well in order to assess the impact of a particular proposal.
- (b) Since objectors do not have any right to attend a site visit held on private land neither the applicant nor his/her agent will be invited to take an active part in the Members' site visit. Similarly if Members enter the property of an objector, that objector will not be invited to take any part in the site visit.
- (c) Site visit arrangements will be confirmed in writing to all interested parties. Letters of confirmation will make it clear that representations on merits will not be permitted at the site visit and that the purpose of the site visit will be simply to enable Members to familiarise themselves with relevant features of the site and surroundings.
- (d) Whilst neighbours, objectors and amenity society representatives will not be invited to site visits, where such persons nonetheless attend the site then, subject to the landowner's consent, such persons may be allowed to remain but the limited scope of the site visit – and the fact that neither applicant nor objectors will be permitted to take any active part in the site visit – should be explained as necessary.

- (e) During site visits there must be no separate discussions taking place between Officers or Members and either applicants or objectors etc.
- (f) The site visit will proceed on the basis that the Planning Implementation Manager's report adequately describes the proposal and the issues of policy/ amenity/safety involved. The Planning Implementation Manager's report will normally have been submitted to the previous meeting of the Committee and a copy of it will be sent to all parties with the letter confirming the site visit arrangements.
- (g) Members may seek clarification, where necessary, of geographical or other relevant features of the site or surroundings by way of questions of Officers. There should, however, be no discussion of or representations on the merits of proposals or objections thereto. The proper forum for any such discussion is the Committee meeting itself.
- (h) In the event that Members consider new issues have arisen from a site visit then the proper course will normally be to request Officers to seek any necessary clarification from the relevant parties and in this respect it would be helpful if interested parties could be available to provide any such clarification to Officers between the site meeting and the Committee meeting. Exceptionally, it may be necessary to defer a discussion at the Committee meeting and request a further report from the Planning Implementation Manager upon those issues. Otherwise, the Chairman at the formal Committee meeting itself will invite discussion and debate in the light of the Officers' report and site visit.