

STANDARDS COMMITTEE

Notice of a Meeting to be held in the Council Chamber,
Civic Centre, Tannery Lane, Ashford on THURSDAY,
the 23RD SEPTEMBER at 7.00 pm

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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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 1st May 2002 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared
4. **Minutes** – To approve the Minutes of the meeting of this Committee held on the 9th March 2004

PART I – FOR DECISION

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DJS/DH/AEH
15th September 2004

Queries concerning this agenda? Please contact Diana Sawyer 330499
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Under 'Council Services' - 'Committee Meetings'



STANDARDS COMMITTEE

MINUTES of a **MEETING** of the **STANDARDS COMMITTEE** held in the Council Chamber, Civic Centre, Tannery Lane, Ashford on the **9TH MARCH 2004**

PRESENT: Cllr. Davidson (Vice-Chairman in the Chair for Minute No. 458);
Mrs C A Vant (Chairman for remaining items) – Independent Member;

Cllrs. Cooling, Hubert, Mrs Larkin, Wickham

Mr D Lyward – Substitute Parish Council Representative
Mr B N Lowry – Independent Member

In accordance with Procedure Rule 1.2 (iii) Councillor Hubert attended as substitute Member for Councillor Yeo.

APOLOGIES: Cllr Yeo, Mr J M G Clarke, Mrs K McNicol

ALSO PRESENT: Cllrs. Cowley, Davison, Wells
Monitoring Officer, Head of Democratic Services, Principal Solicitor (Strategic Development), Member Services Officer.

The Head of Democratic Services reported that Mr J Holborow, one of the Independent Members of the Committee, had resigned from 1st March 2004 as he had accepted a voluntary political appointment with a neighbouring Constituency which would debar him from future membership. Members agreed not to consider filling the position of a fourth Independent Member until the future format of the Standards Committee had been reviewed.

458 ELECTION OF CHAIRMAN

Resolved:

That Mrs C A Vant be elected as Chairman of the Standards Committee for the remainder of this Municipal Year.

459 MINUTES

Resolved:

That the Minutes of the meeting of this Committee held on the 25th June 2002 be approved and confirmed as a correct record.

460 LOCAL DETERMINATION OF CODE OF CONDUCT COMPLAINTS BY STANDARDS COMMITTEE

The Monitoring Officer reported that since June 2003, regulations had been in place allowing the Standards Board's Ethical Standards Officers (ESOs) to refer back to the Monitoring Officer and Standards Committee, determinations of Code of Conduct complaints. These regulations covered the circumstance where ESOs had completed investigations into a complaint and had prepared a report to go back to a Standards Committee or Sub-Committee.

The purpose of the report was to familiarise Members with the procedure for local determination of Code of Conduct complaints, including recommending the adoption of a Pre-Hearing Procedure and a Local Determinations Hearing Procedure.

The Monitoring Officer also highlighted the training session on the conduct of local hearings that would take place on the 24th March 2004. He hoped that as many Councillors and Independent Members of the Standards Committee as possible would attend.

The Committee discussed the report and the recent development of further draft regulations from Government, which would lead to more referrals back to the Monitoring Officer for investigation and report to Sub-Committees of Standards Committees. This would bring a whole new dimension to the work of the Standards Committee and the Monitoring Officer, and as yet there had not been time to analyse the considerable implications in any detail. The Chairman, on behalf of the Committee, expressed concern about the extent of additional Officer work required to resource investigation work. The Monitoring Officer confirmed that he had drawn the matter to the attention of Management Team

With regard to the forming of Sub-Committees, Members sought clarification that the role of the Standards Committee itself would not be diminished in any way. The Monitoring Officer confirmed that the Local Government Act 2003 had included provision for such Sub-Committees to be established and that it would in fact be appropriate to do so, in order to hear individual matters, rather than to have hearings before the full Committee. The formation of Sub-Committees consisting of five Members was deemed an appropriate number, however, this would require a complete revision of the current Articles of the Constitution and Terms of Reference and Membership of the Committee.

Resolved:

- That**
- (i) the Pre-Hearing Procedure and the Local Determinations Hearing Procedure be adopted.**
 - (ii) the conduct and reporting of the pre-hearing process be delegated to the Monitoring Officer.**
 - (iii) the Committee hear the first three referred matters as full Committee.**
 - (iv) the Head of Democratic Services submit a report to the Selection and Constitutional Review Committee recommending:-**
 - (a) a change to the Terms of Reference of, and Delegations to the Standards Committee to enable it to establish “Borough matter” and “Parish matter” Sub-Committees to hear individual matters.**
 - (b) each of the Sub-Committees referred to in (a) above consist of five Members. Three Borough Councillors and two Independent Members for the determination of Borough matters, and two Borough Councillors, two Independent Members and a Parish Councillor for the determination of Parish matters.**
 - (c) further to (a) above (if approved), the Monitoring Officer be delegated authority to determine the allocation individual matters to individual Sub-Committees.**
 - (d) 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.**

NB: None of the Sub-Committees referred to above have to be politically balanced

461 DRAFT GOOD PRACTICE PROTOCOL FOR COUNCILLORS DEALING WITH PLANNING MATTERS

The Monitoring Officer introduced his report, which included:- the draft Good Practice Protocol; its background; the need for it; its aims and scope; and methods by which compliance should be monitored. The Local Government Association had recommended that there should be a Protocol

dealing specifically with planning matters, so in proposing this draft the Committee would follow good practice.

The Committee considered each page of the report in turn and the Chairman invited Members to raise points of concern and questions for clarification. The following comments were made:-

- The Council could not require Parish Councillors to follow the Good Practice Protocol. If adopted however, all Parish Clerks would be provided with a copy of the Protocol, and it was hoped that they would act in accordance with this and would be recommended to do so, so far as relevant to a Parish Council's position as a consultee rather than a determining authority
- Legal action or a complaint of maladministration could be made to the Ombudsman, for example when a Planning Committee had reached a decision with "biased" Councillors speaking or voting, or if decisions were being made on the basis of party political factors
- In response to a question, the Monitoring Officer clarified that he had written to all Members and Parish Clerks reminding them of the need for all Borough and Parish Councillors to register an interest in any charitable, fraternal organisation of which they were a member.
- Concern was expressed as to the correct protocol for Ward Members who were also Members of the Planning Committee, meeting with Applicants, Objectors etc. Whilst attention was directed to paragraphs (a) and (e) on page 27 of the report, Members were advised to always seek advice at the earliest possible opportunity, as individual circumstances were always different.
- With regard to planning decisions taken against the Officers advice, concern was expressed that Planning Officers were occasionally put in the position of having to establish reasons why Councillors wanted to vote against the Officers advice, when they did not agree with that decision. The Monitoring Officer believed there was a balance to be struck whereby although it was not the role of the Planning Officer to "invent" reasons for doing so, they were the professionals at the Committee to give advice. It was their job to put the genuine views of Councillors into the correct planning language. Members should not be afraid to disagree with a proposal if they felt it appropriate, simply because they could not formulate their reasons for doing so in the correct professional terminology.

Resolved:

- That (i) the draft Protocol be approved for further consultation with the Strategic Planning Manager, the Planning Committee and the Executive.**
- (ii) a further report be submitted to this Committee upon the outcome of the consultation.**

Recommended:

- That (i) the terms on which Ward Members may request elevation of a delegated planning decision to the Planning Committee be amended, so that the ground for the request is that the Ward Member "Considers the application raises issues of significant local importance".**
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(DWS)

MINS: STDX0411

STANDARDS COMMITTEE
23 SEPTEMBER 2004

REPORT OF THE MONITORING OFFICER

GOOD PRACTICE PROTOCOL FOR COUNCILLORS DEALING WITH
PLANNING MATTERS

1. At the meeting of this Committee on 9 March 2004, members approved a draft of the above document for consultation with the Strategic Planning Manager, the Planning Committee and the Executive.
2. Consultation has now been completed. A proposed final document is attached reflecting the outcome of the consultation. Only minor textual changes have been made, and a short section on planning obligations has been added. The changes are shown by tracked deletions or additions in bold italics.
3. It is recommended that :
 - i) The attached protocol be recommended to the Council for adoption.
 - ii) A copy of the protocol be provided to all Parish Councils who should be encouraged to comply with its provisions.

**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 *are* 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 *or Local Development Framework*. 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~~*made* 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 *serious* 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 *so far* 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 *on their own*. 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 *whilst* 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.

I. **PLANNING OBLIGATIONS**

1. *In some circumstances it is reasonable to require a developer to provide or fund community benefits or works in connection with a grant of planning permission. The Secretary of State's guidance is that whether it is reasonable to do so depends on whether what is being required is fairly and reasonably related in scale and kind to the proposed development and:*
 - *is needed from a practical point of view to enable the development to go ahead; or*

- *in the case of a financial payment will contribute to meeting the cost of providing such facilities in the near future; or*
 - *is necessary from a planning point of view and is otherwise so directly related to the proposed development and to the use of the land after its completion that the development ought not to be permitted without it.*
2. *The above policy is intended to bring about some certainty and uniformity of approach and to avoid any perception that planning permissions can, in effect, be bought and sold. Current local plan policies on planning obligations are based on this guidance. If planning obligations are offered or required which have little or nothing to do with the proposed development, apart from the fact they are offered by or required of the developer, they are likely to be regarded as an improper attempt to buy or sell a planning permission. The courts have in the past quashed planning permissions where local authorities have been seen to give undue weight to the offer of extraneous benefits.*
 3. *Furthermore government guidance urges greater openness in the handling of planning obligations and avoiding the perception that they are parallel but private system of development control. A councillor who negotiates or discusses privately with a developer the nature of possible planning benefits or obligations is also in danger of being seen to reach a pre-determined view on the proposed development by agreeing to support or oppose it on the basis of a developer's stance in such discussions.*
 4. *For all the above reasons individual councillors should avoid seeking to discuss or negotiate planning benefits directly with developers. Officers will be able to advise on what may be properly required in particular cases and where potential benefits meet the relevant criteria officers can seek to negotiate their provision with developers in an open manner which can be properly documented on case files.*
 5. *Summary*

DO NOT seek to discuss or negotiate possible planning benefits directly with developers. Instead discuss your views with the planning case officer who will consider whether such benefits can properly be sought and, where appropriate, will discuss their provision directly with the developer.

STANDARDS COMMITTEE
23 SEPTEMBER 2004

REPORT OF THE MONITORING OFFICER

LAND OWNERSHIP INTERESTS AND ASHFORD'S FUTURE DEVELOPMENT

1. In view of the ongoing masterplanning work in relation to Ashford's Future, which includes consultation events for Councillors and others, I thought it timely to write to all Councillors to remind them about the Council's Code of Conduct and the need to be alert to possible conflicts between this work and their personal interests. I attach a copy of the letter for members' information. A copy was sent to all Parish Clerks to bring to the attention of their Parish Councillors.
2. Not surprisingly the letter has generated some lively responses from both Borough and Parish Councillors and I will be responding to the various queries. The important thing is that the letter has ensured Councillors at both levels are addressing their minds to the issue and seeking advice which will hopefully help avoid future problems in the few cases where conflict is likely to arise.
3. FOR INFORMATION ONLY

HEAD OF LEGAL AND DEMOCRATIC SERVICES
MONITORING OFFICER

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Our Ref TWM/PR304/001
Your Ref
Date 25 August 2004

«Name»
«Add1»
«Add2»
«Add3»
«Add4»
«Add5»

Dear «Dear»

LAND OWNERSHIP AND DEVELOPMENT

As you will know, the Borough Council and its partners are currently undertaking and commissioning major studies into the possible options for growth of the town. Some of this work has already been the subject of targeted consultation and understandably is now the subject of some public discussion and debate. Whilst the work is ongoing and there are, as yet, no preferred options for growth, I have decided to write to all Councillors about the Borough Council's Code of Conduct, to remind them of the need to be aware of personal interests in any such discussions and to take appropriate action should such interests arise. The most obvious personal interest would be land ownership interests which might be directly affected by the various growth options under consideration.

Whilst it is not possible to lay down rigid rules, my advice is that any Councillor who owns or occupies land which is either likely to be a potential location for development or is likely to be significantly affected by such development should normally regard himself/herself as having a personal interest in any discussion whether on the principle or the detail of possible growth options. That interest will normally be "prejudicial" under the Code of Conduct and that means the Councillor should not take part in or be present at any such discussions and should not seek to improperly influence colleagues behind the scenes. This would apply to meetings at Borough Council or Parish Council level and indeed to any political group discussions or workshop events arranged to facilitate debate.

It is clearly in the interests of individual Councillors and the Council as a whole that we all remain alive to the need to avoid conflict with personal interests as the options for Ashford's future growth begin to emerge and generate public consultation and debate. I anticipate that some Councillors may be unsure about their own individual position regarding the Code in this context. Every Councillor should feel free to contact me in confidence should they be unclear or wish to discuss the matter further.

Yours sincerely



T W Mortimer
Head of Legal and Democratic Services
and Monitoring Officer

STANDARDS COMMITTEE
23 SEPTEMBER 2004

REPORT OF THE MONITORING OFFICER

SUMMARY OF ALLEGATIONS OF MISCONDUCT MADE TO STANDARDS
BOARD FOR ENGLAND

1. It has been agreed that it would be helpful for members to be made aware of allegations of misconduct made against borough councillors and parish councillors within the borough which the Standards Board for England have either (a) investigated and determined or (b) chosen not to investigate. In relation to the latter the information is given in the table below in the form of a statistical summary only as it would be inappropriate to give personal details. In relation to the former, summaries of decisions will be published on the Standards Board website and so in future I will be able to attach a copy of the published summary. However in the one investigated case within the Borough the summary has not yet found its way onto the Standards Board website and so I have included my own summary in the table below.
2. I am aware of three outstanding parish or town council cases within the borough which are the subject of ongoing investigations and these will be reported when a decision has been made.

PART A - CASES INVESTIGATED BY STANDARDS BOARD		
COUNCIL	ALLEGATION	STANDARDS BOARD DECISION
TENTERDEN TOWN COUNCIL - Councillor Masters	Failure to declare an interest at a Planning Committee meeting of the Town Council in March 2004 in relation to a planning application for a garage on land in close proximity to her own private home. Allegation made by a town councillor.	Breach of Paragraph 8 and 10 of the Town Council's Code of Conduct (failure to declare personal interest and failure to withdraw from meeting when a prejudicial interest arises). No action needs to be taken - Councillor Masters resigned from the Town Council due to ill health in May 2004.
PART B - CASES NOT INVESTIGATED BY STANDARDS BOARD		
TYPE OF COUNCIL	ALLEGATION	STANDARDS BOARD FINDING
Borough Council	Failure to treat others with respect in telephone conversation. Allegation made by a member of the public.	No investigation as conduct did not amount to failure to treat complainant with respect.
Borough Council	Failure to treat with respect in comments made about complainant. Allegation made by a borough councillor.	No investigation as matter not of sufficient significance to warrant investigation.
Borough Council	Failure to report a known breach of the Code by a fellow councillor. Allegation made by a borough councillor	No investigation as insufficient information to suggest councillor believed there had been a breach of the Code.
Parish Council	Failure to obtain planning consents for works to own property. Allegation made by a member of the public.	No investigation as conduct (even if it occurred) would not have involved any breach of the Parish Council's Code of Conduct.

STANDARDS COMMITTEE

Report on Local Government Ombudsman Complaints

23 September 2004

External Relations Manager

September 2004

Introduction

Under the Terms of Reference of the Council's Standards Committee, regular reports are required to be submitted to the Standards Committee on Local Government Ombudsman complaints and outcomes, as the Standards Committee is responsible for the monitoring of issues of probity raised in Ombudsman investigations.

This is the first of those reports, and covers the period from April 2004 to date. I would suggest that reports are submitted on a twice-yearly basis. Ideally, each would cover a six-month period (ie April to September and October to March), but this will also depend on the dates that the Standards Committees are held.

The report details only those complaints where the Ombudsman has made a ruling against the Council, either with an official report, or under the terms of 'local settlement'. The categories by which the Ombudsman can find against the Council are:

- Maladministration (with or without injustice)
- Local Settlement

The information in this report has, in line with the Local Government Ombudsman's standards, been made anonymous, so that neither complainants nor sites can be identified. This is also in line with the Council's own recommended good practice on customer care.

In addition to the complaints listed below, the Ombudsman has also received 14 other complaints, since April 2004, about Ashford Borough Council services. Of these, he has rejected six on the grounds of 'no or insufficient evidence of maladministration', and one on the grounds of 'Ombudsman's discretion'. Two were 'premature' complaints, which the Ombudsman has required to be put through the Council's own complaints procedure.

There are, however, five Ombudsman complaints outstanding for this period, which means that the Council has responded to the Ombudsman's investigations but determination by the Ombudsman is still awaited. These will be reported in the next complaints report to the Standards Committee, either in detail (if findings are made against the Council), or as simple statistics if not. Two charts are also appended for the Committee's information: *Ombudsman complaints by service* and *Outcome of Ombudsman complaints*.

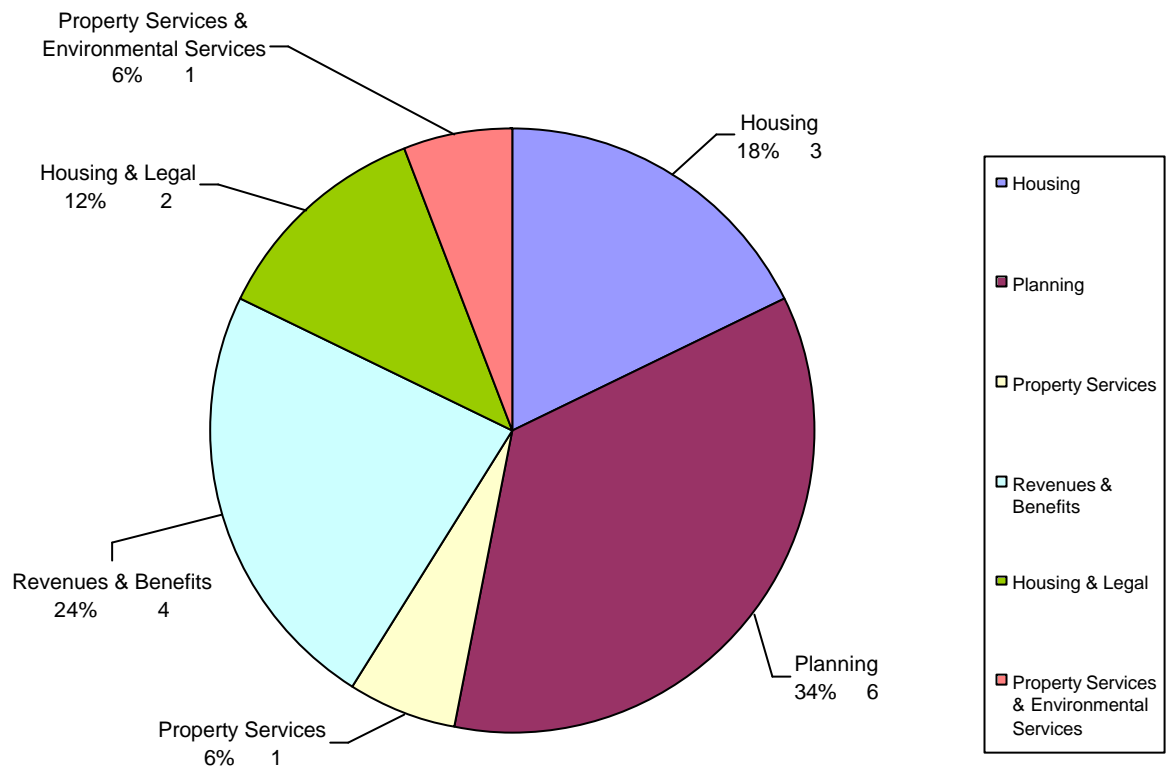
No issues of probity have been raised in the Ombudsman complaints listed since April 2004 to date.

Kirsty Hogarth
External Relations Manager
September 2004

Local Government Ombudsman Complaints: April 2004 to August 2004

ABC Service/ Nature of Complaint	Ombudsman's Ruling	Outcome/Comments	Probity Issues Raised
Private Sector Housing – Administration for disabled facilities grant. Complainant claimed that Council sanctioned payment of a grant for work done on property although it was aware that the work had not been done properly.	Local Settlement (No report) April 2004	Payment of £530 made. The Council had already offered a lower local settlement figure of £200; the Ombudsman felt the higher figure rectified the injustice to the complainant. Complaint has resulted in Council looking at the procedures involved in DFGs and the relative responsibilities of 'Care & Repair' and ABC.	None
Planning: Complainant claimed that Council failed to deal properly with neighbour's application for planning permission to install electronic gates.	Local Settlement (No report) May 2004	Council had dealt with planning application retrospectively; complainant was not happy with permission being granted and also had complaints about noise issues from the gates. Ombudsman could find no evidence of maladministration on granting of planning permission, but classified the issue as 'local settlement' as we agreed to supply diary sheets for complainant to monitor noise issues.	None
Planning: Complainants claimed failure on the Council's part to pursue enforcement action against unlawful activities on a redundant farm site.	Maladministration, with injustice (Report issued) April 2004	Complaint dates back prior to 2000. Ombudsman issued report against ABC. Remedy was in four parts: <ol style="list-style-type: none"> 1. Payment of £1500 to each of four complainants for the injustice suffered 2. Payment of a further £750 to the main complainant, as a time and trouble settlement 3. A recommendation for the Council to review its planning enforcement resources to ensure they are fit-for-purpose 4. A recommendation for the Council to receive regular monitoring reports on the site 	None

Ombudsman Complaints by Service April 2004 - August 2004



Outcome of Ombudsman Complaints

