

Report to the Council

Committee: Epping Forest District Standards Committee **Date:** 18 December 2007

Chairman: Mary Marshall

Item: 14

1. REVIEW OF THE PLANNING PROTOCOL

Recommendations:

- (1) That the amended Planning Protocol be adopted;**
 - (2) That, following this meeting of the Council, the Monitoring Officer send copies to all District Councillors and to the Clerks of Parish and Town Councils and also seek their views on the need for further training in relation to the revisions to the Protocol; and**
 - (3) That the Monitoring Officer produce a Guidance Note for the Clerks of Parish and Town Councils in relation to the requirements for dual-hatted Councillors, in particular regarding their involvement in considering planning applications at Parish/Town Council meetings.**
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Introduction

1. We have conducted a further review of the Council's Planning Protocol. The purpose of this document is to give advice to elected Councillors and officers of the District Council and Parish and Town Councils on ethical issues encountered in the planning process. The review was triggered initially by the newly adopted Code of Conduct which affected a number of sections within the Protocol but we also took the opportunity of carrying out wider consultation with Parish and Town Councils, District Councillors, planning agents and planning professionals to review how the Planning Protocol has been working since it was first introduced three years ago.

Results of Consultation

2. There was a limited response to the consultation and we have drawn the conclusion from this that consultees were generally happy with the proposals being made. The main responses came from members of the Standards Committee and from Development Control officers in Planning Services. For further details of the observations made, the Council is referred to the agenda for our last meeting on 16 October 2007 (supplementary agenda).

Commentary on Changes

3. We are setting out below in summary form the various changes which have been made as a result of the consultation and the new Code of Conduct. These are discussed in turn below:

(a) Councillors with Prejudicial Interests at Planning Meetings (Paragraphs 2.14, 5.1 and 23.2 - 23.6)

4. These paragraphs in the Protocol have been altered to reflect the new position for Councillors in relation to prejudicial interests. The new code states that where a member has a prejudicial interest in a matter which is related to the granting of consents, approvals or licences and the public have a right to address any meeting where those matters are considered, the same facility should be afforded to members of the Council. This is on the condition that once Councillors have made representations, they must leave the meeting and not participate in the decision.
5. Paragraph 2.14 advises all Councillors to have regard to the provisions of the Protocol in relation to how this situation must be dealt with. Paragraph 5.1 states the position as set out in the new Code of Conduct and Paragraphs 23.2 -23.6 give more detailed advice on prejudicial interests stating that members must be careful to act in the same way as a member of the public. Thus, Councillors would address the Planning Committee concerned from the public seating, would be the first speakers called and would then leave the meeting before any other member of the public steps forward. Councillors would also be subject to the same procedures and time limits applied by the Council's public speaking policy.

Conclusion

6. In our view it is important that the public are clear on the role of Councillors if they wish to exercise this right to address a Planning Committee. If the procedures we have outlined are not followed to the letter, there will be confusion in the public mind about the process which may lead to disquiet about undue influence. The Council should also bear in mind that the requirements for prejudicial and other interests to be declared still apply.

(b) Cabinet Members – Conflicts of Interest on Planning Matters (Paragraphs 7.1-7.4)

7. This section of the Protocol is largely unaltered. It deals with proposals which come before Planning Committees, having been previously approved by the Cabinet. The Protocol says that the sponsoring Portfolio Holder(s) have a prejudicial interest in any discussions about planning consents and should not take part. However, we have taken the opportunity in paragraph 7.3 to draw a distinction between the Portfolio Holder's role in sponsoring planning applications on behalf of the Cabinet from their own planning applications.

Conclusion

8. It is important that Portfolio Holders accept the prejudicial interest which is created by having been previously the sponsor of a planning application. The duty to declare in our view focuses only on that member not on any other member of the Cabinet who may have supported a proposal at Cabinet level.

(c) Gifts and Hospitality (Paragraph 9.1)

9. This paragraph has been altered to reflect the requirements of the new Code of Conduct concerning gifts and hospitality. These must now be registered when a Councillor is elected or re-elected and must be regularly monitored to ensure that

they remain up to date. Such gifts and hospitality, if accepted, create a personal interest for a period of three years from the date of receipt. It is possible that the acceptance of such gifts may also create a prejudicial interest and this point is referred to in the revised paragraph 9.1.

Conclusion

10. At Planning Committees, it is possible that a gift accepted within the last three years may create a prejudicial interest and may therefore trigger the arrangements discussed under (a) above were a Councillor to address such a body on a planning matter.

(d) Pre-application and Post-submission Discussions – Role of Officers and Councillors (Paragraphs 10.5 and 10.6)

11. The advice contained in this section of the Protocol is largely unaltered. We have however made changes to these two paragraphs to reflect the fact that we understand that the Council's policy is now to charge for pre-application advice in respect of major applications.

Conclusion

12. We feel that reference should be made to the Council's new charging policy for advice but do not feel that this changes the other advice contained in this section.

(e) Lobbying and Campaign Groups (Paragraphs 21.8-21.12)

13. This section of the Protocol has been radically revised. This is because new Standards Board for England advice on lobby groups is now available. We have considered their advice and feel that it should be incorporated in full in the Protocol.

Conclusion

14. We feel that the new advice from the Standards Board for England is clearer and clearly links to the new Code of Conduct.

(f) Development proposals submitted by Councillors and Officers or where they are Objectors (Paragraphs 22.1-22.2 and 22.8-22.10)

15. We received more observations regarding this part of the Protocol than any other. This section is designed to give advice to members and officers who are submitting their own planning applications. To clarify this part of the Protocol, we have inserted some new sub headings which highlight the main aspects of the advice. Registration of applications/interests by both Councillors and officers, how applications by Councillors are to be dealt with, how applications by officers are to be dealt with, the position of objectors to planning consents and the question of membership of political groups and political parties.

Registration of Interests - Councillors

16. The Protocol says that Councillors and members of staff should register the application with the Council's Monitoring Officer and the Director of Planning and Economic Development as soon as it is submitted. In respect of Councillors, there is a personal and prejudicial interest in that application although the member may exercise their right as a citizen to address the Planning Committee concerned before

withdrawing. The Protocol stresses that members must not seek to improperly influence the decision making in other ways.

Registration of Interests - Officers

17. The Protocol has been amended to ensure that applications by staff of Planning Services will always be determined by an Area Plans Sub Committee or the District Development Control Committee and not by the Service Director under delegated powers.

Objectors

18. Objectors to planning applications are to be dealt with in the same manner as if the Councillor or officer concerned were an applicant.

Political Groups - Interests

19. We were also advised about difficulties which have arisen in some of the Area Plans Sub Committees regarding planning applications by Councillors where members of the same political group declared prejudicial interests. This often placed the quorum for those meetings at risk and resulted in applications being referred to the District Development Control Committee where the membership is drawn from across the District rather than one local area. Paragraph 22.9 has been altered to reflect the Council's decision that all such applications will be referred to the District Development Control Committee.

Conclusion

20. We hope that these changes to the Protocol will enable all Councillors and Planning Officers to be clear on the registration and declaration of interests regarding their planning proposals and also will deal with the difficulties of large numbers of Councillors declaring prejudicial interests in Area Sub Committees.

(g) Appendix 1 - Flow Chart

21. Boxes 1, 2 and 12 of the Flow Chart, which summarise guidance on declaration of interests have been amended to reflect the new Code of Conduct.

(h) Appendix 2 – Lobby Groups

22. This Appendix has been deleted from the Protocol as it relates to advice on lobby groups from the Standards Board for England which is no longer in force.

Other Matters

23. Our recommendations deal with circulation of the revised Protocol to Parish and Town Councils. We have asked the Monitoring Officer to assist Parish and Town Councils with some advice on “dual-hatted” status and the provision of further training courses should they require this. Naturally any training courses which are held will also be available to District Councillors.
24. We recommend as set out at the commencement of this report.