

Southend-on-Sea Borough Council

Report of Corporate Director of Support Services
to
Standards Committee

on
13th September 2010

Report prepared by: John Williams,
Head of Legal & Democratic Services

**Agenda
Item No.**

4

Probity in Planning – Guidance to Members & Officers – Part 5(b) of the Constitution

A Part 1 Agenda Item

1. Purpose of Report

For the Standards Committee to review revised Guidance to Members & Officers on Probity in Planning.

2. Recommendations

The Standards Committee supports the revised Guidance to Members & Officers on Probity in Planning and the Council be recommended to incorporate this Guidance as a revised Part 5(b) to the Constitution.

3. Background

- 3.1 Part 5(b) of the Constitution contains an Informal Local Code of Conduct for Councillors & Officers dealing with Planning Matters.
- 3.2 This Local Code requires an update to reflect recent guidance from several different sources, including the Killian Pretty Review into the planning process which was jointly commissioned by the Department for Communities & Local Government and the Department for Business, Enterprise & Regulatory Reform.
- 3.3 Attached at **Appendix A** is report which was considered by the Development Control Committee at its meeting on 11th August 2010 and the corresponding minute 266. Appendix 1 to the report comprises revised Guidance to Members and Officers on Probity in Planning which would form a revised Part 5(b) to the Constitution. The Guidance deals with the question of lobbying which is referred to in minute 266(3).
- 3.4 The Standards Committee is asked to endorse this Guidance and recommend to Council that it be incorporated as a revised Part 5(b) in the Constitution.

4. Background papers

None

5. Appendices

Appendix A – Report to Development Control Committee 11th August 2010
“Update on Planning Services & Appeal Decisions” and
Minute 266

SOUTHEND-ON-SEA BOROUGH COUNCIL**Meeting of Development Control Committee****Date: Wednesday, 11th August, 2010****Place: Civic Suite, Civic Centre, Southend-on-Sea**

Present: Councillor B T Kelly (Chairman)
 Councillors S J Habermel (Vice-Chairman), Ashley, M Assenheim, J R Clinkscales, A
 Crystall, A J Delaney, Mrs M F Evans, R E Hadley*, J M Garston*, M R Grimwade, Mrs G
 M Horrigan MBE, D J Jarvis*, G Lewin, D A Norman, Mrs P E Rayner, Cllr M Velmurugan

*Substitutes in accordance with Council Procedure Rule 31.

In Attendance: R Harris, A Brown, A Meddle, D Harmitage and Janine Argent
 Also in attendance: Councillors Walker and Stafford.

Start/End Time: 14.00/16.40

**** **Part I**

262 Apologies and substitutions.

Apologies for absence were received from Councillors Mrs Day (substitute: Cllr Jarvis) and Brown (substitute: Cllr Hadley).

263 Declarations of interest.

The following declarations of interest were made:-

(a) Councillor Crystall - SOS/10/01096/FULM & SOS/10/01098/FUL - Council appointed Governor of Southend Hospital - Personal;
 SOS/10/01060/FUL - Member of Leigh Society - personal;

(b) Councillor Mrs Horrigan - SOS/10/00665/FULM - applicant known to her - personal;

(c) Councillor Lewin - SOS/10/01096/FULM & SOS/10/01098/FUL - prejudicial (withdrew)

(d) Councillor Jarvis - SOS/07/01180/OUTM - prejudicial (withdrew)

(e) Councillor Velmurugan - SOS/10/01096/FULM & SOS/10/01098/FUL - GP - personal

264 Minutes of the Meeting held on Wednesday, 16th June, 2010

Resolved:

That the minutes of the meeting held on 16th June 2010 be confirmed and signed as a correct record.

265 Supplementary Report

The Committee received a Supplementary Report by the Corporate Director Enterprise, Tourism and the Environment providing additional information on items referred to elsewhere on the Agenda.

266 Update on Planning Service and Appeal Decisions

The Committee received a report which advised of the progress of the Planning Service in embedding the actions resulting from the Improvement Plan prepared following the Audit Commission's Inspection of the Council's planning Services which was undertaken in March

2009. In particular the purpose of the report is to obtain views of the Committee on updated and amended member guidance on probity in planning.

Resolved:

1. That the report and the updated member guidance attached as Appendix 1 to the submitted report be noted.
2. That the comments on the updated and amended member guidance be incorporated in any reports to Standards Committee on 13th September and subsequently to Council on 4th November 2010.
3. That ways to curtail the lobbying of Members by the public be explored by the Head of Legal & Democratic Services.

267 Reports on Planning Applications

The Committee received reports by the Corporate Director Enterprise, Tourism and the Environment Nos: 10/055 and 10/056 which reported on applications which had been deposited with the Council.

The decision of the Committee in relations to each application is set out below:-

(a) Leigh Ward (pmsv)
SOS/10/01018/FULM

Erect part four/part two storey building comprising 33 retirement apartments and guest bedroom, form vehicular access onto the Broadway, lay out 10 car parking spaces, motorised scooter parking, bin store and amenity area
135-139 Broadway, Leigh-on-Sea, SS9 1PJ
McCarthy & Stone Retirement Lifestyles
Mr G. Bendinelli, The Planning Bureau Limited

Planning Permission REFUSED for the following reasons:

01. The proposed development, by virtue of the void in the building created by the vehicle access, the proliferation of windows and of varying types, lack of an entrance feature and the siting of the building in Leighton Avenue, by reason of its design, appearance, siting and layout would result in an overly prominent building detrimental to the character and appearance of the Broadway and an incongruous development, out of keeping with the character and layout of Leighton Avenue, contrary to Policies KP2 and CP4 of the Core Strategy (DPD1), Policy C11 of the Borough Local Plan and the Design and Townscape Guide, 2009 (SPD1).

02. The proposed development fails to provide satisfactory on-site renewable options to ensure that 10% of the energy needs of the new development are met, contrary to Policies KP2 and CP4 of the Core Strategy (DPD1) and the Design and Townscape Guide, 2009 (SPD1).

03. In the absence of a signed legal agreement, the proposed development fails to: i) provide affordable housing in accordance with Policy CP8 of the Core Strategy (DPD1), and ii) give safe vehicular access to the site by securing the provision of a 'ghost lane' on the adjacent public highway, which will offer a protected right turn when entering the site from the east along Leigh Road.

As such, the proposal would fail to meet local housing needs and is also likely to result in a detrimental effect in terms of highway safety, contrary to Planning Policy Statement 3, Policies KP2, KP3, CP3, CP6 and CP8 of the Core Strategy (DPD1) and Policy T8 of the Borough Local Plan.

04 The proposed development, by virtue of an insufficient level of off-street parking provision, would place additional pressures on on-street parking to the detriment of highway safety and efficiency, contrary to Policy T11 of the Southend on Sea Borough Local Plan 1994 and CP3 of

Southend-on-Sea Borough Council

Report of Corporate Director of Enterprise,
Tourism & the Environment

to

Development Control Committee

on

11th August 2010

Agenda
Item No.

Report prepared by: Peter Geraghty, Group Manager
Development Control and Building Control

Update on Planning Service and Appeal Decisions

Executive Councillor: Mark Flewitt

A Part 1 Public Agenda Item

1. Purpose of Report

- 1.1 To advise the Committee of the progress of the Planning Service in embedding the actions resulting from the Improvement Plan prepared following the Audit Commission's Inspection of the Council's planning Services which was undertaken in March 2009. In particular the purpose of the report is to obtain views of the committee on updated and amended member guidance on probity in planning. A copy of the guidance is attached at appendix 1.

2. Recommendation

- 2.1 **To note the report and the attached updated member guidance.**
2.2 **To comment upon the updated and amended member guidance so that these can be incorporated in any report to Standards Committee on 13th September and subsequently Council on 4th November 2010.**

3. Background

- 3.1 Members will be aware that the Audit Commission undertook a Direction of Travel assessment in November 2007 which was subsequently followed formal inspection from the Audit Commission two years later. This inspection took place on site between the 9th and 13th March 2009. In advance of the inspection by the Audit Commission the Council invited the Planning Advisory Service (PAS) to undertake a peer review of the development control service. As a result of the PAS peer review and inspection a number of recommendations were made.
- 3.2 The Audit Commission made three recommendations in its report on the planning service:

Recommendation One

Improve the customer focus of the Service by:

- enhancing the existing arrangements for engaging with stakeholders, agents, developers and other service users in order to fully understand their needs to shape service improvements and policy;
- developing, publishing and regularly reviewing customer service standards for all parts of the service;
- monitoring performance of the service against those standards; and
- ensuring written guidance is readily accessible.

Recommendation Two

Improve engagement with diverse communities by:

- proactively engaging with the minority and disadvantaged sectors of the community to ensure their needs are understood and met; and
- ensuring that all parts of the service are fully accessible for users from diverse communities.

Recommendation Three

Improve value for money by:

- managers and councillors using cost information alongside performance information to challenge and drive up performance;
- using the comparative data to identify areas in which performance is low compared to that achieved in other councils; and
- using benchmarking with other high performing councils and councils that have significantly improved their performance.

- 3.4 This up-date report fulfils some of the actions in the Service Improvement Plan in respect of the Audit Commission's recommendations particularly recommendation one. The new procedure for pre-application discussion set out in section 5 is an enhancement on the existing arrangements for engaging with stakeholders, agents, developers and other service users.
- 3.5 The Development Control Committee determines the most significant or controversial planning applications and those that are called in to committee by members. The remaining applications are determined under the Council's delegated powers.
- 3.6 On a number of occasions members have expressed the view that they would welcome the opportunity to become involved in the planning process before an application is made. This is would give them and the community an opportunity to influence the outcome of development proposals in the borough. A new procedure for member involvement in pre-application discussions on major applications is set out in sections 5.10 – 5.24 of the guidance (appendix 1).
- 3.7 The procedure sets out that those meetings will be held where large or major developments are proposed and will be arranged by officers (paragraph 5.12) these will be open to members and will be chaired by the chair of Development Control Committee. Following the meeting officers will write to the developer outlining the main issues relating to the proposal (paragraph 5.20).
- 3.8 The remainder of the guidance is similar to the existing guidance (Part 5(b) of the Constitution) but has been updated to reflect the latest guidance on probity in planning (i.e. National Guide for Councillors (2007); The Planning Officer Practice Guide 3 (2007) Positive Engagement – Guide for Planning Councillors

(2008) and the Killian Pretty Review). This brings the guidance into line with the latest practice. Given the Council has introduced a new customer complaints procedure and customer service charter for planning it is timely that this guidance has been updated to reflect current practice.

4. Other Options

This report is to inform members on the review of the Members' Code of Conduct and in particular the updated and amended member guidance on probity in planning. There are no other options to reviewing the Council's Code in the light of current practice and guidance.

5. Reasons for Recommendations

The purpose of this report is to inform members of the progress on embedding the outcomes of the Planning Service Improvement Plan to meet the recommendations of the Audit Commission.

6. Corporate Implications

6.1 Contribution to Council's Vision & Corporate Priorities

The planning service is critical to ensuring the delivery of high quality sustainable development in the town and is critically inter-related to the delivery of the Council's wider regeneration plans, the sustainable community strategy and economic development strategies. Improving and sustaining the performance of the planning service is fundamental to delivering our corporate vision of creating a better Southend

6.2 Financial Implications

There will be further demands on officer time and associated resources as a result of arranging and attending pre-application meetings and undertaking the follow-up correspondence. The planning service does not work in isolation and there may be implications for other services as a consequence new procedure.

6.3 Legal Implications

There are no legal implications other than the possibility of challenge against planning decisions made by the council or complaints either to the Standards Board for England or the Ombudsman.

6.4 People Implications

The report notes the important role that staff within the service will have to play in continuing to embed improvements to the Service. The report recognises that members have a key role to play in the delivery of sustained improvement and that staff are supported to ensure that improvement is continuing and enduring.

6.5 Property Implications

There are none identified in this report.

6.6 Consultation

There has been no formal consultation on the Report although the Audit Commission Inspectors consulted with a number of stakeholders and partners whilst undertaking the inspection.

- 6.7 **Equalities and Diversity Implications**
Greater openness and transparency in the dealings of the Council and its committees particularly in relation to major development proposals is vital for good governance and therefore, equality and fairness. Such measures take account of the Audit Commission's second recommendation that addresses equality issues and the need for the service to improve its stakeholder engagement.
- 6.8 **Risk Assessment**
The Departmental risk analysis had already identified the planning service as an area for improvement particularly given the inconsistent performance against key performance indicators in previous years and the impact on staff. The planning PI's are an important component of how the Council is assessed. It was as a direct result of poor performance that the Inspection was triggered. In addition to this the planning service has been a key area for scrutiny by the Performance Improvement Task Group – PITG – during 2009/10.
- 6.9 **Value for Money**
Greater transparency and clarity in decision making and early engagement with stakeholders is more likely to lead to less uncertainty in the development process. Greater certainty is likely to result in less abortive costs for the developer and local planning authority. This proposal therefore, takes account of the Audit Commission's third recommendation in respect of value for money.
- 6.10 **Community Safety Implications**
There are none identified in this report although clearly the planning function plays an important role in providing safe and sustainable communities.
- 6.11 **Environmental Impact**
Improved planning performance will lead to better decisions and better environmental outcomes.

7. Background Papers

- 7.1 Planning Services Inspection Report.
- 7.2 Planning Service Improvement Plan.

8. Appendices

- 8.1 **Appendix 1 – Part 5(b) – Probity in Planning, Guidance to Members and Officers.**

Part 5(b) – Probity in Planning **Guidance to Members and Officers**

Background

This guidance is based on the revised edition of the Local Government Association publication “Probity in Planning 2009” which refreshes the guidance contained in its previous 2002 publication.

This guidance also takes into account the National Guide for Councillors 2007, The Planning Officer Practice Guide 3 2007, Positive Engagement – Guide for Planning Councillors 2008, and the Killain Pretty review recommendations 2008.

The aim of this guidance is to ensure that planning decisions are made in an open, transparent and impartial manner, and also to facilitate the development of Members’ community roles in respect of planning matters.

For ease of reading Development Control Committee has been abbreviated to DCC.

1. The General Role and Conduct of Members and Officers

- 1.1 Members and officers have different, but complementary, roles. Both serve the public but members are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Members and the Council, and carry out the Council’s work. They are employed by the Council, not by individual Members and it follows that instructions may only be given to officers through a Council, Cabinet or committee decision. A successful relationship between Members and officers can only be based upon mutual trust and understanding of each others positions. This relationship, and the trust which underpins it, must never be abused or compromised. It also relies on each ensuring that they act in a way which is not only fair and impartial, but is also clearly seen to be so.
- 1.2 Both Members and officers are guided by codes of conduct:
Members
- 1.3 The Members’ Code of Conduct (**Part 5(a)** of the Constitution) sets out the requirements on Members in relation to their conduct. Breaches of the Members’ Code of Conduct may be referred to the Standards Committee for investigation and will be usually regarded as maladministration by the Local Government Ombudsman.
- 1.4 The Members’ Code of Conduct covers issues central to the preservation of an ethical approach to Council business (including the need to register and declare interests); appropriate relationships with other Members, staff and the public, which will impact on the way in which Members participate in the planning process.
- 1.5 A Member serving on the DCC or who otherwise becomes involved in making a planning decision must not use or attempt to use his position improperly to confer on or secure for himself or any other person, an advantage or disadvantage...” (paragraph 6(a) of the Members’ Code of Conduct).
- 1.6 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process and opposing views are often strongly held by those involved. Whilst Members should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Members who do not feel that they can act in this way should consider whether they are best suited to serving on the DCC.

Appendix 1

- 1.7 Members should also be extremely cautious about accepting gifts and hospitality. In any event the receipt of any gift or hospitality over the value of £25 must be registered in accordance with the Members' Code of Conduct (see paragraphs 13(1) and 8(1)(a)).

Officers

- 1.8 All officers are subject to an Employee Code of Conduct established by the Council, (see **Part 5(c)** of the Constitution) requiring conduct of the highest order. In particular this requires that officers treat all members of the community and customers with fairness and equity. Again there are strict rules relating to hospitality. Officers should not accept personal gifts except items of token value.
- 1.9 In addition the Local Government and Housing Act 1989 provides that certain posts are "politically restricted" and those who hold such posts are prevented from carrying out certain outside activities.
- 1.10 Finally planning officers who are members of the Royal Town Planning Institute (RTPI) are subject to a professional Code of Conduct and breaches may be subject to disciplinary action by the RTPI.

2. Declaration and Registration of Interests, Bias and Predetermination

Interests

- 2.1 The Local Government Act 2000 and the Members' Code of Conduct place requirements on Members regarding the registration and declaration of their interests, and the consequences of having such interests.
- 2.2 Interests are described as being either a personal interest, or a personal interest that is also prejudicial. These terms are explained in full in **Part 5(a)** of the Constitution.
- 2.3 The main difference between the two levels of interest is that as a general rule, having declared a personal interest, a Member can continue to participate in the debate and vote upon the matter, whereas a prejudicial interest will affect a Member's participation in the debate and ability to vote. Again, this is fully explained in **Part 5(a)** of the Constitution.
- 2.4 Requirements relating to declaration of interests must be followed scrupulously.
- 2.5 Members who are unsure whether an interest should be declared should seek the advice of the monitoring officer or the solicitor to the DCC, preferably in advance of the committee meeting, although the ultimate responsibility for fulfilling the requirements rests individually with each Member.
- 2.6 A register of Members' interests is maintained by the monitoring officer. Members should review their situation regularly, and ensure the register is kept up to date. The register is open to the public.

Bias and Predetermination

- 2.7 It is essential that DCC Members attend DCC with an open mind, prepared to consider all evidence and argument from both sides before making a decision. A DCC Member who has, or is seen to have a biased view or a pre-determined position cannot vote or participate in the relevant matter.

A useful test to determine whether a position or view could be considered to be biased is to think about whether a fair minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.

- 2.8 A perception of bias, even if no actual bias is established, can be sufficient to render a planning decision vulnerable to either a high court challenge, a complaint to the Ombudsman, or to an award of costs in a planning appeal, depending on the nature of the decision.

Appendix 1

3. Development Proposals Submitted by Members and Officers, and Council Development

- 3.1 Proposals to their own authority by Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for a Council's own development. Proposals can take the form of either planning applications or Development Plan proposals.
- 3.2 It is perfectly legitimate for such proposals to be submitted, and such proposals should be treated with the same transparency and impartiality as those of private developers.
- 3.3 It is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Accordingly:
 - a) Any Members or Officers who act as agents in respect of a planning matter with the Council should play no part in the decision-making process for that proposal. Similarly, if they submit their own proposal to the Council, they should take no part in its processing or decision making. Any such proposals will be considered and determined by DCC.
 - b) Proposals for the Council's own development must be treated in accordance with Government advice.

4. Lobbying of and by Members

- 4.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process. Those who may be affected by a planning decision will often seek to influence it through an approach to their elected ward Member or to a Member of the DCC.
- 4.2 However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Member being called into question, particularly when Members of DCC who are taking a planning decision have been lobbied on that very matter.
- 4.3 In considering planning applications and other planning matters Members must take account of all relevant planning considerations, including those presented at committee, before arriving at a decision. In this way, the decision is, and is seen to be determined in a transparent, and fair and reasonable manner.
- 4.4 To have previously committed themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. It could result in an aggrieved party seeking a Judicial Review of the way in which a decision has been arrived at, or a complaint to the Ombudsman on grounds of maladministration, or an award of costs at an appeal, depending on the nature of the decision.
- 4.5 Therefore, when being lobbied, Members, particularly those of the DCC should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, Members should restrict themselves to giving procedural advice, which may include suggesting that those who are lobbying should speak or write to the relevant planning officer in order that their opinions can be included in the officer report to committee.
- 4.6 If Members of DCC do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at DCC. In that way they will not have predetermined a matter.
- 4.7 Members of the DCC should not have decided, and so should not openly declare which way they intend to vote in advance of having heard all of the evidence and arguments from all sides at the DCC meeting.

Appendix 1

- 4.8 In reality, of course, Members will often form an initial view about an application early on in its passage through the system, whether or not they have been lobbied. That is understandable and perfectly reasonable as long as they are prepared to listen to, and consider all the relevant evidence and arguments from both sides.

Ward Members

- 4.9 Political reality suggests that it is often important to distinguish between the role of the DCC Member who is, and who is not, a Ward Member for the area affected by a particular planning application.
- 4.10 A DCC Member who does not represent the ward affected is in an easier position to adopt an impartial stance, however strong his or her feelings about the application may be, and to wait until the DCC meeting before declaring one way or the other.
- 4.11 A DCC Member who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome or in opposing it, they will not be able to demonstrate that they are prepared to consider all relevant evidence and argument, as they will have clearly predetermined their position. In such circumstances, the Member must declare at the DCC meeting their predetermined position. They may then continue to represent those ward interests by speaking at DCC pursuant to paragraph 12(2) of the Members' Code of Conduct. However, the Member should not vote, and should leave the meeting after making his or her comments.
- 4.12 The ward Member effectively has to choose between supporting a cause and so having a predetermined position, and taking an active role in the decision making process at DCC. It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Member.

Specific Issues

- 4.13 Given that the point at which a decision on a planning application is made cannot occur before the meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the DCC meeting must not be used to decide how members should vote.
- 4.14 Members in general should avoid organising support for or opposition to a planning application, and avoid lobbying other Members. Such actions can easily be misunderstood by parties to the application and by the general public.
- 4.15 Members should not put pressure on officers for a particular recommendation and should not do anything which compromises, or is likely to compromise, their impartiality.
- 4.16 Where a Member receives written representations directly in relation to a planning application he/she shall pass the correspondence to the planning case officer in order that those representations may be taken into account and set out in any committee report.
- 4.17 A request to refer to DCC an application that is delegated to officers under paragraph 5.7.3 of **Part 3 to Schedule 3** to the Constitution, should include a general reason. However a Member (particularly a DCC Member) should not express a view as to whether they believe the application is acceptable or not, as this could amount to predetermination.

5. Pre-Application Discussions on Major Applications

- 5.1 Discussions between a potential applicant and the Council prior to the submission of an Application can be of considerable benefit to both parties and is encouraged by the Local Government Association, and the Planning Advisory Service.
- 5.2 However, it would be easy for such discussions to become, or be seen by objectors to become, part of a lobbying process.

Appendix 1

- 5.3 In order to avoid such problems, all pre-application discussions should take place within clear guidelines. Although the term 'pre-application' has been used, the same considerations should apply to any discussions which take place before a decision is taken.
- 5.4 A distinction is made between pre-application discussions for minor development, and those for major development.

Minor Applications

- 5.5 Pre-application discussions in respect of minor applications should be dealt with by officers. The following general guidelines in 5.6 - 5.9 must be adhered to:
- 5.6 It should always be made clear at the outset that the discussions will not bind the Council to making a particular decision and that any views expressed are personal and provisional. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.
- 5.7 Advice should be consistent and based upon the Development Plan and material considerations. All officers taking part in such discussions should make clear whether or not they are the decision-maker.
- 5.8 A note should be made of all meetings. A follow-up letter is advisable where there is any risk of ambiguity in respect of the outcome of any meeting. A note should also be taken of telephone discussions.
- 5.9 Care must be taken to ensure that advice is not partial, nor is it seen to be so.

Major Applications

- 5.10 It is recognised that Member engagement in pre-application discussions for major development is important, and should be encouraged.
- 5.11 However, the involvement of Members can, if the process is not carefully controlled, give rise to allegations of partiality and that Members have fettered their discretion. Accordingly, discussions involving Member participation should take place within the general guidelines in 5.6 - 5.9 and the following additional guidelines in 5.12 - 5.14:
- 5.12 All meetings will be arranged by officers, and must be attended by at least one officer, who will make a record of the discussions that took place. That record will be available for public inspection.
- 5.13 A Member may not participate in pre-application discussions if they have a prejudicial interest in the matter.
- 5.14 Members must ensure that they are familiar with the need to remain impartial, and unbiased.

Pre-Application Presentations to Members on major Applications

- 5.15 A developer presentation to Members and stakeholders can be useful in connection with a major application. It should be part of the wider Statement of Community Involvement process involving other consultation as set out in the SCI and in this note.
- 5.16 It is an opportunity for the developer to explain his proposals and to be asked questions by Members and stakeholders.
- 5.17 It is important that presentations take place at an early pre-application stage in the development process so that developers may address certain aspects of their proposals as a result of questions asked during the presentation.
- 5.18 Presentations by developers will not be appropriate after a planning application is submitted to the Council. This is because at that stage there may be third party interest (e.g. objecting

Appendix 1

to the proposal) and third parties will not have the same opportunity to be able to present their ideas to Members.

5.19 The presentation will be arranged by the Head of Planning and Transportation. Presentations will normally take place in the Civic Centre. The developer should be made aware that it can take a while (e.g. possibly up to twelve weeks) to find a time for the presentation. The invitees should include:

- All Members of the Council (ward Members to receive a letter or email other Members to be advised by member update)
- The Planning Case Officer and any other Officers who will have a significant role in the case.
- An officer from Highways Team
- A spokesperson for any local residents group and their deputy.
- A spokesperson for any identified group where the activities of the group are related to the proposal.

5.20 The presentation is introduced by a Chairman or Vice Chairman of DCC, and will normally comprise:

- (i) Chairman's introduction, including advising the meeting of the rules to ensure that no issues of pre-determination can arise (2 minutes)
- (ii) Planning officer to provide a planning policy context for the development (5 minutes)
- (iii) The developer to outline their proposals (roughly 10 to 15 minutes)
- (iv) Questions and answers (roughly 30 minutes)
- (v) A debrief of Members only following meeting.
- (vi) Officers will then draft a letter to the developers within 14 days of the date of the meeting outlining the main issues relating to the proposal (Members who attended the meeting will also be provided with a copy).

5.21 When introducing a Developer Presentation to Members and stakeholders the following information should be presented.

- *This is a Developer Presentation to Members and stakeholders and is being conducted under our guidance for such meetings.*
- *The following stakeholders have been invited [names]*
- *Development Control members should remain open minded about development proposals and should not reach a firm view of the merits or otherwise of a proposal as a result of this presentation.*
- *There will be a question and answer session at the end of the meeting.*
- *No Members should make statements in support of or opposed to the development proposals but should restrict themselves to questions. Members should also be aware that in raising questions, there is no impression given of support or opposition to any application. Stakeholders are requested to do the same.*

5.22 Formal minutes will not be taken of the Developer Presentation. Developers are required to submit a Statement of Community Involvement with their planning application. Developers should note in this that a developer presentation took place.

5.23 Developers should not by themselves arrange a Developer Presentation for Members and stakeholders. This can only be done by officers. If developers do want to arrange a meeting where they can present their ideas to members and stakeholders, this should, in accordance with the SCI take the form of a public meeting. The key differences are:

Appendix 1

- (a) The public meeting should be held local to the development site,
 - (b) The general public should be invited, and
 - (c) DCC Members should not be specifically targeted as the invitees (rather it would be the local ward Members who would be invited or all Members).
- 5.24 A behind closed doors meeting between a developer and Members of the DCC would not be acceptable.

6. Officer Reports to Committee

- 6.1 The courts and Ombudsman advice have determined that officer reports on planning applications must have regard to the points in 6.2 – 6.6 below:
- 6.2 Reports should be accurate and cover, among other things, the substance of objections and the views of people who have been consulted
- 6.3 Relevant points will include a clear exposition of the Development Plan, site or related history, and any other material considerations.
- 6.4 Oral reporting, except to update a report, should be extremely rare and carefully minuted when it does occur.
- 6.5 Reports should have a written recommendation of action.
- 6.6 Reports should contain a technical appraisal which clearly justifies the recommendation. If the recommendation in the report is contrary to the provisions of the Development Plan (a departure), the material considerations which justify this must be clearly stated.
- 6.7 It is particularly important to follow this guidance, not only as a matter of good practice, but because failure may constitute maladministration and/or give rise to judicial review on the grounds that the decision was not taken in accordance with the provisions of the Development Plan and the Council's statutory duty under Section 38A of the Planning and Compensation Act 2004.

7. Public Speaking at Development Control Committee

- 7.1 The Council operates a system of public participation in respect of planning applications that are considered by DCC (see Standing Order 6C in **Part 4 (a)**), and details of this scheme are set out below:
- 7.2 If an objector wishes to address DCC in respect of an application, they must give written notice of that request by 12 noon on the last working day before the relevant meeting.
- 7.3 Once an objector has given such notice, the applicant will be notified of the fact and the date and time of the relevant meeting and be afforded the opportunity to address that meeting in response.
- 7.4 An applicant or supporter will only be allowed to address the relevant meeting if an objector has exercised their right to speak.
- 7.5 Only one speaker in support of, and one speaker against, the planning application will be permitted to address DCC. Local groups/organisations (or their representatives) will not be afforded the opportunity to address the DCC in respect of a planning application.
- 7.6 Where more than one person wants to speak for or against a planning application, then a spokesperson must be appointed. Where a spokesperson cannot be agreed, then the Chairman will decide who shall speak. Where more than one person wants to respond in support of a planning application then the applicant has priority. Should a Member speak

Appendix 1

against an application, the applicant does not have the same right to reply as referred to in 7.4.

- 7.7 An objector or applicant/supporter may be represented by an agent.
- 7.8 All speakers will be limited to three minutes each.
- 7.9 Speakers will not be allowed to ask a supplementary question or make a supplementary statement and will not be cross-examined.

8. Late Representations

- 8.1 How the receipt of late representations are dealt with will vary depending on circumstances:

Late Representation Received by Officers Prior to Committee

- 8.2 Regulations provide a statutory framework for the receipt of representations, including the 21 day period. On the other hand, if the Council does not take account of a material planning consideration, whether or not received within the statutory period, its decision could be challenged. It is an extremely difficult situation that should be carefully controlled.
- 8.3 Most late representations do not raise new material planning considerations. Late representations will be dealt with in different ways depending on how late they are, as set out in 8.4 – 8.5 below:
- 8.4 If late representations are received by officers more than 3 working days before the DCC meeting, officers will have an opportunity to consider them. Unless the representations introduce a new material planning consideration that needs to be explored more fully, officers will prepare a supplementary report to DCC enclosing a summary of them.
- 8.5 If representations are received 3 working days or less before the DCC meeting, officers may not have had the opportunity to consider them fully, nor to advise on whether or not they are factually correct.

If the late representation introduces no new material considerations, it will not be put before Members and will not be considered.

If the late representation does introduce a new material consideration, officers will so advise the DCC, so that the new consideration can be taken into account. If absolutely necessary, for example the new consideration raises issues that need to be further explored; the item would need to be deferred.

Photos and Other Information Presented at Committee

- 8.6 Such information will not have been considered at all by officers. It may be misleading or factually incorrect. For example, a photo taken at a particular angle that supports the position of the person presenting it. To permit such material to be considered could be dangerous. Subject to exceptional circumstances producing such documents at DCC should not be permitted.

9. Decisions Contrary to the Development Plan and/or Officer Recommendation

- 9.1 The law requires that decisions should be taken in accordance with the Development Plan unless material considerations indicate otherwise (Section 38A Planning & Compensation Act 2004). This gives rise to two main issues:

Firstly, all applications that are not in accordance with the Development Plan must be identified and advertised as such.

Appendix 1

Secondly, if it is intended to approve such an application the material considerations justifying such decision must be clearly identified and how those considerations override the Development Plan must be clearly demonstrated. The application may then have to be referred to the Secretary of State depending upon the type and scale of development proposed. If the officer's report recommends approval of such departure from plan policy, the justification for this should be included in full in that report.

- 9.2 Prior to a decision being made, which is contrary to the recommendation in the report, the officer should be given the opportunity to explain the implications of making such a decision.
- 9.3 If the DCC makes a decision which is contrary to the recommendation in the officer report, the minute should record the DCC's reasons for refusal or approval, as the case may be. The Courts have expressed the view that such reasons should be clear and convincing. Personal circumstances of the applicant will rarely provide such grounds. A copy of the DCC minute will be placed on the planning file.
- 9.4 A senior legal officer should always attend DCC to ensure that procedures have been properly followed.

10. Pre-Meeting Site Visits

- 10.1 Site visits by Members before DCC cause delay and cost, and should only be carried out where necessary.

Necessity

- 10.2 A site visit is only likely to be necessary if either:

- the proposed development is difficult to visualise from the plans, photographs and supporting material;

or,

- There is good reason why the comments of the applicant and/or objector(s) cannot be expressed adequately in writing;

or,

- the proposal is particularly contentious;

or,

- a particular Member requests it and the request is agreed by the Chairman of DCC.

Requesting a Site Visit

- 10.3 The DCC agenda will list which applications will be preceded by a site visit.
- 10.4 Members can request a site visit by contacting the head of Planning and Transportation or the Group Manager; providing the reason for the request. The officers will consult with the Chairman.
- 10.5 If the agenda has not yet been printed, notification of the site visit will be included on the agenda.
- 10.6 If the agenda has already been printed, officers will notify Members separately of the additional site visit.

Appendix 1

- 10.7 If the request for a site visit is made at the DCC meeting, Members will discuss and resolve whether to defer consideration of the item until a site visit has been carried out.

Protocol

- 10.8 Where a site visit does take place, the Protocol is as follows:

- It will take normally place during the morning of DCC.
- An officer will always arrange the site visit.
- A planning officer will always attend and conduct the site visit, and will bring relevant issues to the attention of Members. The officer will keep a record of the attendance, and a brief note of events of the visit.
- The visit need only be made known to the applicant or objector where it is necessary to enter the land of either.
- Representations will not be heard, and material will not be accepted. No debate with any party will take place.
- The chairman may invite an applicant or objector to point out matters or features relevant to the matter, having first explained to them that it is not the function of the visit to accept representations or to debate.

11. Regular Review of Decisions

- 11.1 Members of the DCC should review a sample of implemented planning permissions to assess the quality of the decisions. Such a review should improve the quality and consistency of decision-making, strengthening public confidence in the planning system, and can help with reviews of planning policy. It should also assist DCC members to refine their understanding of the impact of their decisions.
- 11.2 A review will usually be undertaken annually, and will be arranged by officers, in consultation with the DCC chairman.
- 11.3 It should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases. Briefing notes should be prepared on each case. The DCC should formally consider the review and decide whether it gives rise to the need to review any policies or practices.

12. Complaints and Record Keeping

- 12.1 Whatever procedures a Council operates, it is likely that complaints will be made. However, the adoption of this Guidance should reduce the occasions on which complaints are justified. It should also provide less reason for people to complain in the first place.
- 12.2 The Council already has a fully developed local complaints system.
- 12.3 So that complaints may be fully investigated, and in any case as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. Every planning application file should contain an accurate account of events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it had been reached. Particular care needs to be taken with applications determined under officers' delegated powers. Such decisions should be as well documented and recorded as those taken by the DCC. These principles apply equally to enforcement and development plan matters.

Appendix 1

13. Date of Introduction

13.1 This Code was adopted by the Council on..... 2010.