

**TO: COUNCIL
27 NOVEMBER 2013**

**REVIEW OF THE PLANNING PROTOCOL FOR MEMBERS
Director of Corporate Services – Legal**

1 PURPOSE OF REPORT

- 1.1 This report seeks the approval of the Council to a revised Planning Protocol for Members.

2 RECOMMENDATION

- 2.1 **That the draft Planning Protocol for Members shown as Annexe A to this report be adopted in substitution for the existing Protocol.**

3 REASONS FOR RECOMMENDATION

- 3.1 The existing Planning Protocol for Members is out of date. The draft Protocol reflects developments in the law and current thinking as to Members involvement in Planning matters.
- 3.2 The Leader of the Council has requested that the provisions of the current Protocol relating to party Group Whips be reviewed.
- 3.3 The draft Protocol has been approved by the Code of Conduct Working Group and was recommended for approval (with minor amendments) by the Standards Committee at its meeting on 30 October 2013.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 As set out in reports to the Code of Conduct Working Group.

5 SUPPORTING INFORMATION

- 5.1 The Council put in place a Planning Protocol for Members shortly after it became a unitary local authority in 1998. The Protocol has not been reviewed for many years and it no longer reflects either the law or current best practice. In particular it:-
- refers to provisions of the old prescribed Code of Conduct which have been replaced by a new local Code in consequence of the Localism Act 2011
 - takes a restrictive approach to Member engagement in the Pre-Application process which is significantly at variance with current government thinking which encourages Members to become engaged in the Pre-Application process
 - does not reflect the evolution both in case law and statute relating to the issues of pre-determination and use of party Group Whips.

- 5.2 The Terms of Reference of the cross party Code of Conduct Working Group were extended to include review of the Planning Protocol. The major alterations from the current Protocol proposed by the draft revised Protocol are set out below.

Member Engagement

- 5.3 As regards lobbying, the previous Protocol did not draw any distinction between constituents and others. Members of the Working Group were firmly of the view that whilst Councillors should be free to meet with constituents (including applicants) to receive their views it would not be appropriate to enter into discussions with other persons except as provided by the Pre-Application process. The Standards Committee generally endorsed that approach but agreed with an amendment to paragraph 8 of the draft Protocol proposed by the Borough Solicitor in order to make explicit that the prohibition on discussions with others does not preclude discussions with officers and other Members and to permit discussions with constituents of the ward the Member resides in (if different from the ward they represent).
- 5.4 The existing Protocol takes a restrictive view as to Member involvement in Pre-Application discussions. That is contrary to recent advice from central government, notably the National Planning Policy Framework, which promotes the view that Members can and should make a contribution in helping to shape development proposals. The draft revised Protocol seeks to achieve that aspiration but in the context of a controlled process which will achieve a proper degree of transparency. In that regard the essential elements of the revised draft Protocol are:-
- when developers contact the Council to engage in Pre-Application discussions they should be able to request that the Ward Members attend the meeting with the Planning officer.
 - the Ward Members can decide whether or not to engage in the Pre-Application process
 - the Executive Member with responsibility for Planning and the Chairman and Vice Chairman of the Planning Committee may attend the Pre-Application meetings
 - requests for Pre-Application discussions will be included on the weekly list of planning applications received sent to Members
 - all Members will have access to files on Pre-Application discussions but the confidentiality of those files must be retained.

Pre-determination

- 5.5 The law against pre-determination has evolved through case law. In essence "Pre-determination" is a rule of law that those involved in decision making should not have reached a final conclusion on which way they will vote in advance of the meeting at which the decision is to be taken. At the time the existing Protocol was put in place the courts were adopting a particularly

purist approach which resulted in a number of local authority planning decisions being quashed as a result of statements made by Councillors in advance of Committee meetings or Councillors on the Planning Committee having previously being involved in consideration of a proposed development in a different capacity (e.g. as a Member of an advisory Committee considering proposals affecting listed buildings). With the passage of time the courts have, pragmatically, recognised that the realities of life are such that it is not realistic to expect democratically elected Members to abstain from all comments on sometimes controversial development proposals until a Committee meeting. Accordingly, in recent years the case law has significantly “softened” and it is only in the most extreme of circumstances that a planning decision will be quashed through pre-determination. In addition, Section 25 of the Localism Act now provides that pre-determination should not be deemed to have occurred just because a Member has, prior to the decision being made, done anything that directly or indirectly indicated what view they would take. The draft revised Protocol reflects the more permissive state of the law.

Party Group Whips

- 5.6 Related to the evolution of case law on pre-determination, the law relating to the use of Group Whips has also developed since the Protocol was first adopted. In summary, the law now is that although Members may take into account the views of their fellow Members as expressed through the Group Whip it would be unlawful for them in reaching a decision to feel that they are obliged to follow the Group Whip instruction.
- 5.7 Council will recall that the Leader referred to the Standards Committee for its consideration the issue as to whether there had been a breach of the existing Protocol by the application of the Conservative Group Whip to approve the consultation draft of the Site Allocations Development Plan Document. On the basis that the existing Protocol is expressed to apply to all Planning decisions rather than just decisions on Planning applications, the Committee decided that there had been a technical breach of the Protocol.
- 5.8 Four main options were put to the Working Group, namely:-
- (a) retain the current blanket prohibition on applying the Group Whip to any planning decision.
 - (b) allow the Group Whip to be applied on all planning decisions.
 - (c) allow the Group Whip to be applied to planning policy decisions and to planning applications of strategic significance.
 - (d) allow the Group Whip to be applied only to planning policy decisions.

The Working Group were in favour of the option (d), an approach also endorsed by the Standards Committee.

Public Exhibitions and Presentations

- 5.9 The existing Protocol precludes Members from attending presentations by developers unless the arrangements have been approved by a Planning Officer and either a Planning Officer is present or has advised that a Planning

Officer need not be present. The Working Group were of the view that Members should be able to attend public exhibitions given by developers (without requiring approval from a Planning officer) but that attendance at private presentations would be inherently contrary to the degree of transparency appropriate in planning matters and should therefore be precluded (even in a capacity as Parish Councillor).

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

- 6.3 Not required.

Strategic Risk Management Issues

- 6.4 Not required.

Other Officers

- 6.5 None.

7 CONSULTATION

Principal Groups Consulted

- 7.1 The Code of Conduct Working Group, Corporate Management Team and the Standards Committee.

Method of Consultation

- 7.2 Reports to meetings.

Representations Received

- 7.3 The draft revised Protocol is that approved by the Code of Conduct Working Group subject to minor amendments proposed by CMT and the Standards Committee.

Background Papers

File of Borough Solicitor.

Contact for Further Information

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Doc. Ref.

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