

**COUNCIL
24 APRIL 2003**

**A PROTOCOL FOR MEMBERS IN DEALING WITH PLANNING MATTERS
(Acting Director of Corporate Services – Legal/Director of Environment)**

1 INTRODUCTION

- 1.1 The former Planning & Transportation Committee endorsed the principle of a Code of Conduct being formulated to assist Members in the handling of Planning matters. However, the formulation of such a Code was deferred pending the introduction of the “New Ethical Framework” introduced by the Local Government Act 2000.
- 1.2 Although the Code of Conduct for Members provides a general framework of propriety for Members to work within it is considered that a Protocol dealing specifically with Planning issues is warranted given the complexities of the Planning process.

2 RECOMMENDATION

- 2.1 That the Council adopt the “Protocol for Members Dealing With Planning Matters” shown as Annexe A to this report.**

3. SUPPORTING INFORMATION

- 3.1 The main purposes for putting in place a Protocol relating to Planning are:-
- to ensure public confidence in the Planning process conducted by the Council
 - to assist Members in ensuring that they observe the Code of Conduct for Members
 - to minimise the risk of legal challenge to a Planning decision
- 3.2 A draft of the Protocol was considered by the Environment Select Committee at its meeting on 6th March 2003 and by the Standards Committee at its meeting on 9th April 2003. The draft was prepared in the light of opinion commissioned by the Standards Board for England on a number of issues relating to Planning which the Code of Conduct for Members touches upon. A model Planning Protocol recently formulated by the Association of Council Secretaries and Solicitors also informed the drafting the Protocol.
- 3.3 As a result of the deliberations of the Environment Select Committee and the Standards Committee the following amendments have been made to the draft presented to the Environment Select Committee:-
- Paragraph 1.5 now makes clear that the Protocol applies to all Members, not just those serving on the Planning & Highways Committee.

- Paragraph 4.2 provides that Members sitting on a panel to determine whether a parcel of amenity land should be sold should not participate at the Planning & Highways Committee when an application for the change of use of the amenity land to private residential use is considered. However, Ward Members who have expressed a view on the proposed disposal should be able to participate unless they have a closed mind on the issue. It is considered that there is a material difference between a Member expressing an opinion in consultation from participating in a decision after having considered all the arguments.
- Paragraph 4.4 makes clear that if a Member is considered to have pre-determined an application then he/she should withdraw from the Council Chamber when the item is considered.
- An amendment to Paragraph 6.2 and a new Paragraph 6.6 makes clear that the section on “Pre-Application Discussions” does not preclude Members from discussing the merits of planning applications with fellow Members or officers. Paragraph 6.5 provides that mere receipt of representations or objections does not trigger the provisions of the Protocol relating to Pre-Application Discussions.
- An example has been given in Paragraph 6.2 of what might constitute an “exceptional circumstance” where it would be appropriate for the Chairman or Vice-Chairman or Executive Member to become involved in Pre-Application Discussions.
- Paragraph 6.7 provides that the officer attending Pre-Application Discussions should make a note of the meeting.
- The section on “Site Visits” omits two points from the draft which went before the Select Committee, namely that Committee Members should try and attend site visits if at all possible and that Members should not visit a site unless they have first spoken to the Head of Planning and Building Control or case officer. Paragraph 9.1 is also new.
- A new Section 10 on “Appeals” has been added.
- Paragraphs are numbered

3.4 The Standards Committee recommended to Council that subject to the amendments outlined above the Protocol be adopted by Council. Under the Council’s Constitution the Standards Committee has responsibility for considering and determining any allegation of a breach of any protocol adopted by the Council. However, this must be read subject to two caveats. Firstly, if an alleged breach of the Protocol would also constitute a breach of the Members’ Code of Conduct it would have to be determined under the procedures laid down by the Local Government Act 2000. At the date of this report no regulations have been made which allow such allegations to be determined by the local Standards Committee. Secondly, the Protocol gives guidance on the determination of Planning applications. It is not the function of the Standards Committee to act as an arbitrator on the merits of Planning applications and any complaints which in substance seek a review of the merits of a Planning matter will not be accepted.

Background Papers
File of Borough Solicitor

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