
**MINUTES OF THE STANDARDS COMMITTEE
HELD ON WEDNESDAY 17 DECEMBER 2014 AT 10.00 A.M. IN THE COUNCIL CHAMBER,
COUNCIL OFFICES, THORPE ROAD, WEELEY**

Present: Councillors N Stock (Chairman), J Hawkins, P Honeywood, I Johnson, F Nicholls and M Talbot

In Attendance: Corporate Director (Corporate Services) (Martyn Knappett), Monitoring Officer (Lisa Hastings) and Senior Democratic Services Officer (Ian Ford)

Also in Attendance: Clarissa Gosling and John Wolton (Independent Persons) and Reverend Doctor William Lock (Independent Remuneration Panel Member)

12. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

An apology for absence was received on behalf of Councillor White (with Councillor Talbot substituting).

The Chairman welcomed Clarissa Gosling and John Wolton, Independent Persons, and Reverend Doctor William Lock, Independent Remuneration Panel Member, to the meeting.

13. MINUTES OF THE LAST MEETING

The minutes of the last meeting of the Standards Committee, held on 29 September 2014, were approved as a correct record and signed by the Chairman.

14. DECLARATIONS OF INTEREST

There were no declarations of interest recorded at this time.

15. PRE-ELECTION PUBLICITY GUIDANCE

There was submitted a report (A.1) by the Corporate Director (Corporate Services) which sought the Committee's comments on the Guidance Note issued to District Council Members and Officers prior to the Clacton Parliamentary Constituency and Essex County Council Brightlingsea Division By-Elections held in October 2014 in order to help ensure that it was clear, concise and easily understood in readiness for the Clacton Parliamentary Constituency, District Council and Town & Parish Councils' Elections in May 2015.

The Guidance Note was before the Committee as the Appendix to item A.1 of the Report of the Corporate Director (Corporate Services).

Having considered the Guidance Note it was moved by Councillor Talbot, seconded by Councillor Johnson and:

RESOLVED, that the comments made by the Committee, through its discussion of the Pre-Election Publicity Guidance Note, be taken into account by the Officers when the Guidance Note for the 2015 Elections is prepared.

16. MEMBERS' PLANNING CODE/PROTOCOL

There was submitted a report (A.2) by the Monitoring Officer, which sought approval of the Model Council Members' Planning Code/Protocol produced by Lawyers in Local Government (2014).

It was reported that, as part of the Council's Monitoring Officer's fundamental review of Codes and Protocols adopted by Tendring District Council in respect of decision making, the Planning Matters; Local Protocol for Councillors (third edition – March 2011) had been reviewed with consideration given to recommended good practice and national guidance.

The Monitoring Officer informed the Committee that rather than simply update the existing Local Protocol adopted by the Council in 2011, she had felt that it would be more appropriate to propose a new document, which was based on the Model Council Members' Planning Code or Protocol produced by the national body "*Lawyers in Local Government (LLG)*". That Model Code had been produced in accordance with the changes to the ethical framework in 2012 and guidance issued by the DCLG. Members were advised that the Model Code/Protocol could be adapted to cover and include the specific requirements of Tendring District Council.

The Monitoring Officer also informed the Committee that consultation had taken place with the Head of Planning Services and it was proposed that the following provisions of the current "Planning Matters: Local Protocol for Councillors (March 2011) be incorporated into the Model Protocol:

- *Provisions relating to Site Visits contained at paragraphs 9.6 and 9.8, concerning how the Planning Committee Chairman will open the formal site visit and the procedure to be followed thereafter, including the Planning Committee members staying together as a Group (this would be included within section 7 of the Model Protocol); and*
- *The training provisions set out in Section 14 to include the mandatory training expectations on Planning Committee and Local Plan Committee members and named substitutes (this would be included within Section 11 of the Model Protocol).*

In addition, it was suggested that the Committee recommend to Council that the document, once approved, be included within Part 6 of the Council's Constitution, relating to Codes and Protocols.

The proposed Planning Code/Protocol was before the Committee as the Appendix to item A.2 of the Report of the Monitoring Officer.

Having considered the proposed Planning Code/Protocol:

It was moved by Councillor Johnson, seconded by Councillor P B Honeywood and:

RESOLVED that the LLG Model Council Members' Planning Protocol, as amended at the meeting and as set out in the Appendix to these Minutes, be approved and adopted.

RECOMMENDED TO COUNCIL that the LLG Model Council Members' Planning Protocol be included within Part 6 (Codes and Protocols) of the Council's Constitution.

17. ESSEX POLICE AND MONITORING OFFICER PROTOCOL

There was submitted a report (A.3) by the Monitoring Officer, which informed the Committee of the outcome of negotiations between Essex Police and Monitoring Officers across Essex to agree a Protocol which would apply County-wide, on dealing with potential breaches of the Disclosable Pecuniary Interest requirements.

The Monitoring Officer reminded the Committee that, under Section 34 of the Localism Act 2011, the Government had introduced summary offences, relating to elected and co-opted Councillors' failure to disclose / register and participate in a meeting where they had certain interests (termed Disclosable Pecuniary Interests –“DPI”). Those were detailed in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

As the prosecution of such offences would be by the Police (by virtue of Section 34(5) of the Localism Act 2011), Essex Police and Essex Local Authority Monitoring Officers had agreed a Protocol relating to the reporting of / information sharing for potential criminal offences arising under Section 34 Localism Act 2011.

The Protocol was before the Committee as the Appendix to item A.3 of the Report of the Monitoring Officer.

It was moved by Councillor P B Honeywood, seconded by Councillor Nicholls and:

RESOLVED that the contents of the report and the Essex Police and Essex Local Authority Monitoring Officers Protocol be noted.

18. ORAL REPORT FROM THE INDEPENDENT PERSON (JOHN WOLTON)

The Committee received an oral report from the Independent Person (IP) (John Wolton) on his recent attendance at an external IP workshop.

A copy of Mr Wolton's notes was circulated to the Committee.

19. UPDATES FROM THE MONITORING OFFICER AND/OR DISCUSSION TOPICS

(1) Quarterly Update on Complaints etc.

The Monitoring Officer circulated to the Committee a written quarterly update, the contents of which, following discussion, was noted.

(2) Committee on Standards in Public Life (CSPL) Guidance Document

The Committee discussed the contents of the CSPL Guidance Document “Ethics in Practice: Promoting Ethical Conduct in Public Life” (July 2014).

The Monitoring Officer confirmed that, as part of the Induction Training Day for District Councillors elected in May 2015, she would be providing training on conduct and standards matters.

(3) Date of the Next Meeting of the Committee

Councillor Hawkins asked if the date of the next meeting of the Committee, which was currently scheduled for Wednesday 18 March 2015, could be changed as he would be unable to make that date.

The Chairman indicated that he would be happy to consider that request and would consult with Officers as to possible alternative dates.

The meeting was declared closed at 11.00 a.m.

Chairman

MODEL COUNCIL
MEMBERS' PLANNING CODE OR PROTOCOL
Produced by Lawyers in Local Government (LLG)

Background:

The Members' Planning Code of Good Practice was originally prepared in response to a series of successful court challenges concerning themselves with local planning authorities and the Members' conduct or conflicts of interests. It replaced what was a number of individual and sometimes haphazard approaches in individual councils at the time.

The drafting of the model code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or counsel acting on their behalf.

This 2014 update takes into account the update to the Seven Principles of Public Life (the "Nolan principles") and commentary from the Committee on standards in public life, the changes in the approach to codes of conduct and also to predetermination introduced by the Localism Act 2011 and the guide on "Openness and transparency on personal interests" published by the Department for Communities and Local Government 2013.

For further reading please refer to "Probity in Planning" issued by the Local Government Association.

Introduction:

The aim of this Protocol: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of the planning system is to regulate the development and use of land in the public interest. **Your role as a Member of the Planning Committee is** to make planning decisions openly, impartially, with sound judgment and for justifiable reasons. You are also a democratically accountable decision-taker who had been elected to provide and pursue policies. You are entitled to be predisposed to make planning decisions in accordance with your political views and policies **provided** that you have considered all material considerations and have given fair consideration to relevant points raised.

When the Protocol applies: this Protocol applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and

consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Protocol to your own circumstances you should seek advice early, from the Monitoring Officer or one of their staff, and preferably well before any meeting takes place.

1. Relationship to the Members' Code of Conduct

- **Do** apply the rules in the Members' Code of Conduct first, which must always be complied with. This is both the rules on interest, Disclosable Pecuniary Interests (DPIs) and any other interests identified by your Authority, and the general rules and obligations giving effect to the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.
- **Do** then apply the rules in this Members' Planning Protocol, which seek to explain and supplement the Members' Code of Conduct and the law on decision making for the purposes of planning control. If you do not abide by this Members' Planning Protocol, you may put:
 - the Council at risk of proceedings on the legality of the related decision or maladministration; and
 - yourself at risk of being named in a report made to the Council or, if the failure is also likely to be a breach of the interest provisions of Localism Act 2011, a complaint being made to the Police to consider criminal proceedings.

2. Development Proposals and Personal Interests (includes pecuniary and non-pecuniary interests, as defined by the Code of Conduct)

- **Do** disclose the existence and nature of your interest as required by your Authority's Member Code of Conduct.
- **Do take into account when approaching a decision** that the Principle of Integrity is defined in terms that

“Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. **They must declare and resolve any interests and relationships**”.

It is therefore advisable that you:

- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think that you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a disclosable or other personal conflict of interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.
- **Do** note that you are not prevented from seeking to explain and justify a proposal in which you may have a conflict of interest to an appropriate officer, in person or in writing, but that your role as a councillor may place additional limitations on you in representing the proposal in which you have a personal interest.
- **Do** notify the Monitoring Officer in writing where it is clear to you that you have a Disclosable Pecuniary Interest or other personal conflict of interest and note that:
 - you should send the notification no later than submission of that application where you can;
 - the proposal will always be reported to the Committee as a main item and not dealt with by officers under delegated powers;
 - you must not get involved in the processing of the application; and
 - it is advisable that you employ an agent to act on your behalf in respect of the proposal when dealing with officers and in public speaking at Committee.

3. **Fettering Discretion in the Planning Process** (natural justice, predisposition and predetermination)

- **Don't** fetter your discretion by approaching the decision with a closed mind.
- **Do** be aware that in your role as an elected Member you are entitled, and after often expected, to have expressed views on planning issues and that these comments have an added measure of protection under the Localism Act 2011.
- **Do** keep at the front of your mind that, when you come to make the decision, you
 - are entitled to have and to have expressed your own views on the matter, provided you are prepared to reconsider your position in the light of all the evidence and arguments;
 - must keep an open mind and hear all of the evidence before you, both the officers' presentation of the facts and their advice as well as the arguments from all side;

- are not required to cast aside views on planning policy you held when seeking election or otherwise acting as a Member, in giving fair consideration to points raised;
 - are only entitled to take account a material consideration and must disregard considerations irrelevant to the question and legal context at hand; and
 - are to come to a decision after giving what you feel is the right weight to those material considerations.
- **Do** be aware that you can be biased where the Council is the landowner, developer or applicant if you have acted as, or could be perceived as being, a chief advocate for the proposal. This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating that proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.
 - **Do** consider yourself able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or both a District and County Councillor), provided:
 - the proposal does not substantially affect the well being or financial standing of the consultee body;
 - you make it clear to the consultee body that:
 - your views are expressed on the limited information before you only;
 - you must reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Committee and you hear all of the relevant information; and
 - you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee.
 - **Do** explain that you do not intend to speak and vote as a member of the Committee because you will be perceived as having judged (or you reserve the right to judge) the matter elsewhere, so that this may be recorded in the minutes.
 - **Do** take the opportunity to exercise your separate speaking rights as a Ward/Local Member where you have represented your views or those of local electors and fettered your discretion, but do not have a disclosable or other personal conflict of interest. Where you do:
 - advise the proper officer or Chair that you wish to speak in this capacity before commencement of the item;

- remove yourself from the seating area for members of the Committee for the duration of that item; and
- ensure that your actions are recorded.

4. **Contact with Applicants, Developers and Objectors**

- **Do** refer those who approach you for planning, procedural or technical advice to officers.
- **Don't** agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it. Where you feel that a formal meeting would be useful in clarifying the issues, you should seek to arrange that meeting yourself through a request to the Head of Planning or Planning Manager to organise it. The officer(s) will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the application file and the record of the meeting is disclosed when the application is considered by the Committee.
- **Do** otherwise:
 - follow the Authority's rules on lobbying;
 - consider whether or not it would be prudent in the circumstances to make notes when contacted; and
 - report to the Head of Planning or Planning Manager any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file [a proforma has been supplied to you for this purpose].

In addition in respect of presentations by applicants/developers:

- **Don't** attend a planning presentation without requesting an officer to be present.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the Planning Authority.
- **Do** be aware that a presentation is a form of lobbying and, whilst you may express any view on the merits or otherwise of the proposal presented, you should never state how you or other Members would intend to vote at a committee.

5. **Lobbying of Councillors**

- **Do** explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, it may subsequently prejudice your impartiality, and therefore your

ability to participate in the Committee's decision making, to make any sort of promise to vote one way or another or such a firm point of view that it amounts to the same thing.

- **Do** remember that your overriding duty is to the whole community not just to the people in your ward/division and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.
- **Don't** accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible, including its addition to your register of interests where relevant.
- **Do** copy or pass on any lobbying correspondence you receive to the Head of Planning or Planning Manager at the earliest opportunity.
- **Do** promptly refer to the Head of Planning or Planning Manager any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- **Do** inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality), who will in turn advise the appropriate officers to follow the matter up.
- **Do** declare that you have been lobbied on any particular matter at the Planning Committee when the application is being considered under the Declaration of Interests item of the agenda.
- **Do** note that, unless you have a disclosable or overriding other personal conflict of interest, you will not have fettered your discretion or breached this Planning Protocol through:
 - Listening or receiving viewpoints from residents or other interested parties;
 - Making comments to residents, interested parties, other Members or appropriate officers (making clear that you must keep an open mind when it comes to making the decision);
 - seeking information through appropriate channels; or
 - being a vehicle for the expression of opinion of others in your role as a ward/division Member.

6. Lobbying by Councillors

- **Don't** become a member of, lead or represent an organisation whose primary purpose is to lobby or promote or oppose planning proposals unless it is your intention to openly campaign on the matter and will therefore step away from the Committee when it comes to make it's decision.
- **Do** join general interest groups which reflect your area of interest and which concentrate on issues beyond particular planning proposals (such as the Victorian Society, CPRE, Ramblers Association or a local civic society), but you should

normally seek to disclose that interest on the grounds of transparency where the organisation has made representations on a particular proposal.

- **Don't** excessively lobby fellow councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- **Don't** decide or discuss how to vote on any application at any political group meeting, or lobby any other Member to do so. Political Group Meetings should never dictate how Members should vote on a planning issue.

7. Site Visits/Inspections

- **Do** attend site visits organised by the Council, otherwise you will NOT be permitted to sit on the Committee for those items.
- **Do** ensure that you report back to the Committee any information gained from the site visit that you feel would benefit all Members of the Committee
- **Do** ensure that you treat the site visit only as an opportunity to seek information and to observe the site.
- **Do** ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.
- The Chairman will open the formal site visit and invite Officers to point out relevant features of the site and its surroundings. The Chairman will then invite the applicant, local Ward Members present, Town and Parish Councillors and local residents present (one at a time) to point out any relevant features of the site and its surroundings, ask related questions and raise any site-related issues that they wish to draw to the attention of Councillors. Councillors will be able to see the physical features of the site and ask questions of any speaker. There will be no discussion of the merits of the case, and all questions from Councillors and other speakers must be put through the Chairman.
- The visiting Planning Committee party will stay together as a group. No lobbying by applicants or objectors will be allowed at the site visit. If an applicant or objector(s) persist(s) in attempting to lobby, all Councillors and Officers will leave the site.
- **Don't** express opinions or views.
- **Don't** enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias unless:
 - you feel it is essential for you to visit the site other than through attending the official site visit.
 - you have first spoken to the Head of Planning or Planning Manager about your intention to do so and why (which will be recorded on the file) and
 - you can ensure you will comply with these good practice rules on site visits.

8. Public Speaking at Meetings

- **Don't** allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) other than through the scheme for public speaking or through the Chairman, as this may give the appearance of bias.
- **Do** ensure that you comply with the Council's procedures in respect of public speaking.

9. Officers

- **Don't** put pressure on officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Head of Planning or Planning Manager, which may be incorporated into any committee report.
- **Do** recognise that officers are part of a management structure and only discuss a proposal, outside of any arranged meeting, with the Corporate Director or Head of Planning or those officers who are authorised by their Corporate Director or Head of Planning to deal with the proposal at a Member level.
- **Do** recognise and respect that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendation will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. Decision Making

- **Do** ensure that, if you request a proposal to go before the Committee rather than be determined through officer delegation, that your planning reasons are recorded and repeated in the report to the Committee.
- **Do** come to meetings with an open mind and demonstrate that you are open-minded.
- **Do** comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan unless material considerations indicate otherwise.
- **Do** come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you. Request that further information. If necessary defer, or refuse.
- **Don't** vote or take part in the meeting's discussion on a proposal unless you have been present at the entire debate, including the officers introduction to the matter.

- **Do** have recorded the reasons for Committee's decision to defer any proposal [and that this is in accordance with the Council's proposal on deferrals].
- **Do** make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that you may have to justify the resulting decision by giving evidence in the event of any challenge.

11. Training

- Members that have been nominated by their Group Leaders can act as a designated substitute member of the Planning or Local Plan Committees. Any member of a political group is eligible to be a designated substitute member providing that they have received training in relation to planning matters under a continuing programme arranged by the Council.
- The Council provides training for Councillors on development control, local plan making and/or other planning matters at least once a year. The Council also aims to provide more specialist training to update knowledge, cover particular topics or to look at matters in greater depth. Training events are open to all Councillors and where places are limited, current members and named substitutes of the Planning and Local plan Committees will take priority.
- **Don't** participate in decision making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.
- **Do** endeavour to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively.
- **Do** participate in the annual review of a sample of planning decisions to ensure that Members' judgements have been based on proper planning considerations.