



Committee: STANDARDS COMMITTEE
Date: THURSDAY, 1 OCTOBER 2009
Venue: LANCASTER TOWN HALL
Time: 10.00 A.M.

A G E N D A

1. **Apologies for Absence**
2. **Minutes**
Minutes of meeting held on 18th June, 2009 (previously circulated).
3. **Items of Urgent Business authorised by the Chairman**
4. **Declarations of Interest**
5. **Review of Assessment Criteria** (Pages 1 - 5)
Report of the Monitoring Officer
6. **Summary of Complaints** (Pages 6 - 8)
Report of the Monitoring Officer
7. **Standards Board Guidance on Dispensations** (Pages 9 - 19)
Report of the Monitoring Officer
8. **Work Programme** (Pages 20 - 23)
Report of the Monitoring Officer
9. **Review of the Planning Protocol** (Pages 24 - 36)
Report of the Monitoring Officer

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors

Councillors Roger Dennison, Sheila Denwood, Sarah Fishwick, Janie Kirkman, Ian McCulloch, Roger Sherlock and Joyce Taylor

Independent Members

Stephen Lamley (Chairman), Tony James, David Jordison and Sue McIntyre

Parish Council Representatives

Margaret Davy, Paul Gardner, Susan O'Brien and Frank Senior

(ii) Substitute Membership

Councillors

Councillors Keith Budden, John Gilbert, Roger Plumb, Ron Sands and Jude Towers

(iii) Queries regarding this Agenda

Please contact Ron Matthews, Democratic Services – telephone (01524) 582074 or e-mail rmatthews@lancaster.gov.uk

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone 582170, or alternatively email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER LA1 1PJ

Published on 22nd September 2009.

STANDARDS COMMITTEE**REVIEW OF ASSESSMENT CRITERIA
1st October 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider a proposed amendment to the Assessment Criteria.

This report is public

RECOMMENDATIONS

- (1) **That the proposed amendment to the Assessment Criteria for referring an allegation to the Monitoring Officer for investigation, as set out in the report, be approved.**

1.0 Introduction

1.1 At its meeting on the 18th June 2009, the Committee reviewed its complaints procedure documentation, including the Assessment Criteria. A copy of the Assessment Criteria as approved at that meeting is appended to this report.

1.2 The Committee expressed concern that, in considering whether to refer a complaint to the Monitoring Officer for investigation, cost should not be the overriding factor, and requested the Monitoring Officer to consider an appropriate amendment to B1, and to report back to a future meeting.

2.0 Proposal Details

2.1 The Monitoring Officer has reviewed the Assessment Criteria adopted by a number of local authorities. Whilst some have adopted a criterion similar to B1, the reference to cost is by no means uniform, and was not a Standards Board requirement.

2.2 The Monitoring Officer would suggest that B1 could perhaps be amended to read:

“Where the allegation discloses a potential breach of the Code of Conduct sufficiently serious, if proven, to warrant a sanction, and where it would be in the public interest to investigate.”

2.3 Whilst it would be open to the Assessment Sub-Committee, in considering the public interest, to take account of the resources (time, cost etc) that an investigation would require, it would also be possible to look at other issues, for example the health of the

subject member, and whether or not an investigation would serve any useful purpose.

2.4 The Committee is asked to consider the proposed amendment.

3.0 Details of Consultation

3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

4.1 It is open to the Committee to approved the amendment suggested above, or some other amendment of B1, or to leave B1 unamended.

**CONCLUSION OF IMPACT ASSESSMENT
(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

None arising from this report.

FINANCIAL IMPLICATIONS

None directly arising from this report.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

None directly arising from this report.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

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APPENDIX 1

LANCASTER CITY COUNCIL STANDARDS COMMITTEE – ASSESSMENT CRITERIA

A. Circumstances where the Assessment Sub-Committee may decide that no action should be taken in respect of the allegation:

A1 Where the complaint is about someone who is no longer a member of the city council or a parish council

A2 Where the information provided by the complainant is not sufficient to enable the Sub-Committee to make a decision as to whether the complaint should be referred for investigation or other action

However, the complainant will be advised that it is possible to resubmit the complaint with further information.

A3 Where a substantially similar allegation has previously been made by the complainant to the Standards Board or the Standards Committee, or the complaint has been the subject of an investigation by another regulatory authority (except where a Review Sub-Committee has taken the view that a request for review contains new information and should be considered by an Assessment Sub-Committee rather than the Review Sub-Committee)

The Sub-Committee will only refer the complaint for investigation or other action if it considers that there is a compelling reason to do so

A4 Where the complaint is about something that happened so long ago that those involved are unlikely to remember it clearly enough to provide credible evidence, or where the lapse of time means there would be little benefit or point in taking action now.

It is acknowledged, however, that where a delay has arisen as a result of criminal or other legal proceedings, it may be appropriate to refer the complaint for investigation or other action.

A5 Where the allegation is anonymous, unless it includes documentary or photographic evidence indicating an exceptionally serious or significant matter

A6 Where the allegation discloses a potential breach of the Code of Conduct, but the Committee considers that the complaint is not serious enough to warrant further action

A7 Where the complaint appears to be malicious, politically motivated or tit-for-tat, unless a serious matter is raised in the complaint

B. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for investigation

B1 Where the allegation discloses a potential breach of the Code of Conduct that the Committee considers sufficiently serious to justify the cost of an investigation

C. Circumstances where the Standards Committee may decide to refer the allegation to the Monitoring Officer for training, conciliation or other steps as appear appropriate to the Standards Committee

Note This approach may be appropriate where the Sub-Committee believes that the conduct, if proven, may amount to a failure to comply with the Code, and that some action should be taken in response to the complaint. If this approach is taken, the purpose of the action is NOT to find out whether the subject member breached the Code, and no conclusion will have been reached on whether the subject member failed to comply with the Code. It should be noted that this approach may only be taken after consultation with the Monitoring Officer

C1 Where the complaint suggests that there is a wider problem throughout the authority, for example of a poor understanding of the Code of Conduct, or the Council's protocols or procedures, and it is appropriate to extend the action to other members who are not the subject of the complaint

C2 Where it is apparent that there is a lack of experience or training, or where the allegation if proven would not warrant any of the sanctions (apart from training) that would be available after a hearing.

C3 Where the complaint indicates a general breakdown of relationships, including those between members and officers, as evidenced by a pattern of allegations of minor disrespect, harassment or bullying to such an extent that it is becoming difficult to conduct the business of the Council.

C4 Where there appears to have been misleading, unclear or misunderstood advice from officers.

C5 Where there are allegations and retaliatory allegations from the same members.

C6 Where there are allegations that may be symptomatic of governance problems within the Council, which are more significant than the allegations in themselves.

D. Circumstances where the Standards Committee may decide to refer an allegation to the Standards Board

D1 Where the Assessment Sub-Committee believes that the status of the member or members, or the number of members about whom the complaint is made, would make it difficult for the Standards Committee to deal with the complaint. For example if the complaint is about the Leader of the Council or a Group Leader, or a member of the Cabinet or Standards Committee

D2 Where the Assessment Sub-Committee believes that the status of the complainant(s) would make it difficult for the Standards Committee to deal with the complaint. For example if the complainant is a group leader, member of Cabinet or the Standards Committee, or the Chief Executive or a statutory officer.

D3 Where the Assessment Sub-Committee considers that there is a potential conflict of interest of so many members of the Standards Committee that it could not properly deal with the matter itself

D4 Where the Assessment Sub-Committee believes that that there is a potential conflict of interest of the Monitoring Officer or other officers, and that suitable alternative arrangements cannot be put in place to address the conflict

D5 Where the case is so serious or complex that it cannot be handled locally

D6 Where the complaint will require substantial amounts of evidence beyond that available from the authority's documents, its members or officers

D7 Where the complaint relates to long-term or systematic member/officer bullying which could be more effectively investigated by someone outside the Council

D8 Where the allegation raises significant or unresolved legal issues on which a national ruling would be helpful

D9 Where the public might perceive the Council to have an interest in the outcome of a case. For example if the authority could be liable to be judicially reviewed if the complaint were upheld

STANDARDS COMMITTEE**SUMMARY OF COMPLAINTS****1st October 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To provide the Committee with a summary of complaints of alleged breach of the Code of Conduct received or finalised since April 2009, and the outcome of those complaints.

This report is public

RECOMMENDATIONS

(1) That the report be noted

1.0 Introduction

1.1 A summary of complaints received since May 2008 was presented to the Committee at its meeting on the 9th April 2009. The Committee's work programme provides for the Committee to receive information about the number of complaints received and their outcome at six monthly intervals.

2.0 Details

2.1 The attached table summarises the one complaint that had not been finalised at the time of the April meeting, and the one further complaint that has been received since.

2.2 As Members will be aware, when a complaint is considered by the Assessment Sub-Committee, the options available are to refer the matter to the Monitoring Officer for investigation or other action, to refer the matter to the Standards Board for England, or to decide that no action should be taken.

2.3 Members will note that the most recent complaint was the first to be referred to the Monitoring Officer for investigation. At the time of writing this report, the investigating officer was awaiting comments on her draft report.

3.0 Details of Consultation

3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

4.1 The overview of complaints is for noting.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing) None arising from this report.	
FINANCIAL IMPLICATIONS None directly arising from this report.	
SECTION 151 OFFICER'S COMMENTS The Section 151 Officer has been consulted and has no further comments.	
LEGAL IMPLICATIONS None directly arising from this report.	
MONITORING OFFICER'S COMMENTS The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.	
BACKGROUND PAPERS None	Contact Officer: Mrs S Taylor Telephone: 01524 582025 E-mail: STaylor@lancaster.gov.uk Ref:

STANDARDS COMMITTEE 1st October 2009 – SUMMARY OF COMPLAINTS

REF	SUBJECT MEMBER	COMPLAINANT	DATE OF COMPLAINT	DATE OF ASSESSMENT SUB-COMMITTEE	SUMMARY OF COMPLAINT	OUTCOME
2/09.	City Councillor	City Councillors	2/3/09	11/3/09	Failure to declare prejudicial interest at start of item of business, and participation in part of the item of business	Referred to the Monitoring Officer for "other action" (training). Successful conclusion of "other action" reported to Assessment Sub-Committee 9th June 2009
3/09	City Councillor	City Councillor	14/5/09	28/5/09	Using or attempting to use position as member improperly to confer on or secure for self or any other person an advantage or disadvantage	Referred to the Monitoring Officer for investigation. Draft report sent to subject member and complainant 21st August 2009

STANDARDS COMMITTEE**STANDARDS BOARD GUIDANCE ON DISPENSATIONS****1st October 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To provide the Committee with a the Standards Board's Guidance on dispensations.

This report is public

RECOMMENDATIONS

- (1) That the Committee resolve that each request for a dispensation be considered on its merits, taking account of the Standards Board's Guidance as appended to the report.
- (2) That the Committee consider whether a member making a request for a dispensation should be permitted to make oral representations to the Committee, or whether the application should be dealt with only through written representations.
- (3) That the Committee consider whether it would wish to establish a sub-committee to deal with requests for dispensations, and if so the size and composition of such a sub-committee.

1.0 Introduction

- 1.1 At its meeting on the 18th June 2009, the Committee received a report on the Standards Committee (Further Provisions) (England) Regulations 2009, which include new provisions clarifying the grounds on which standards committees may grant dispensations to local authority members.
- 1.2 If a member acts in accordance with a dispensation, any participation in business prohibited by the mandatory provisions of the Code of Conduct will not constitute a failure to comply with the Code.
- 1.3 The circumstances where a standards committee may grant a dispensation to a member or co-opted member are:
 - where more than 50% of the members who would, but for the granting of any dispensations in relation to that business, be entitled to vote at a meeting, are prohibited from voting; or

- where the number of members that are prohibited from voting at a meeting would, but for the granting of any dispensations in relation to that business, upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

- 1.4 A request for a dispensation must be submitted in writing to the standards committee. As previously, a dispensation can only be granted in respect of business arising in the period of four years following the grant of the dispensation.
- 1.5 The Standards Board has now published guidance for standards committees on dispensations.

2.0 Details

- 2.1 A copy of the Guidance is appended to this report, and it is recommended that whenever a request for a dispensation is received, it should be considered by the Committee on its own merits, taking account of the Standards Board's Guidance.
- 2.2 Members will note that page 6 of the Guidance states that the committee will need to consider whether the member making the request will be allowed to make oral representations to the committee, or whether the application will be dealt with only through written representations. The Committee is asked to consider whether it wishes to deal with applications through written representations only or to allow oral representations.
- 2.3 Members may also wish to note that a standards committee may set up a sub-committee to consider requests for dispensations. In the past, the Committee has been minded not to set up such a sub-committee, but to deal with any requests in full Committee. The disadvantage of this is that it is less easy to arrange for a request to be dealt with at short notice. If the Committee were minded to establish a sub-committee to deal with dispensation requests, consideration would need to be given as to its size, composition, and whether it should have a fixed membership, or whether the Head of Democratic Services should be given authority to convene ad hoc sub-committees as required. An ad hoc arrangement would have the advantage of ensuring that any elected members on the sub-committee were of a different group from the applicant.

3.0 Details of Consultation

- 3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 Representations: Option 1 would be to allow a member requesting a dispensation to make oral representations. Option 2 would be to rely on the information contained in the written request. The Monitoring Officer has no preferred or recommended option.
- 4.2 Sub-Committee: Option 1 would be for the full Committee to continue to consider requests for dispensations. In the past there have been very few such requests, and the interval between full Committee meetings has not caused any difficulties. Option 2 would be to establish a Sub-Committee of perhaps three or five members to consider requests. This would have the advantage that the Sub-Committee could convene at relatively short notice. If this were Members' preferred option, consideration would need to be given to the composition of such a Sub-Committee

with regard to independent members, parish representatives and city councillors. A Sub-Committee with a fixed membership could be established, or it would be possible to delegate to the Head of Democratic Services the convening of ad hoc sub-committees, ensuring that there is a parish representative if the request is from a parish councillor, and that, if the request is from a city councillor, the city councillor member of the sub-committee is from a different group. The Monitoring Officer has no preferred or recommended option.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

None arising from this report.

FINANCIAL IMPLICATIONS

None directly arising from this report. Any costs from holding a Sub-Committee meeting is expected to be small and will be met from existing Democratic Services budgets.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

The Local Government Act 2000 provides that the rules in respect of the allocation of seats to political groups do not apply to the Standards Committee and its sub-committees.

MONITORING OFFICER'S COMMENTS

The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.

BACKGROUND PAPERS

None

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DISPENSATIONS



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introduction

This guidance on dispensations is aimed at standards committees. It is not mandatory but has been written to help describe when standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest.

dispensations

Granting dispensations under the new regulations

The legislation states standards committees can grant dispensations for members allowing them to speak and vote at a meeting when they have a prejudicial interest. The criteria for granting these dispensations changed in June 2009

Concerns were raised by some authorities, as well as the Standards Board for England, about the provisions of previous dispensation regulations. Due to these concerns, the Standards Committee (Further Provisions) (England) Regulations 2009 (the regulations) revoke the previous regulations. They replace them with new provisions to clarify the grounds on which standards committees may grant dispensations to local authority members.

Under Section 54A(1) of the Local Government Act 2000 an authority's standards committee can set up a sub-committee to consider requests for dispensations. Any reference in this guidance to the standards committee includes any sub-committee which has this function.

Dispensations may be granted for speaking only, or for speaking and voting. The 2007 Code of Conduct (the Code) relaxed the provisions for restricting members from speaking. Therefore, the need to request a dispensation in this respect is now limited to circumstances where the public do not have the right to speak, or to where a parish or police authority has not adopted paragraph 12(2) of the Code.

Part 4 of the regulations sets out the

circumstances in which a standards committee can grant dispensations to members of relevant authorities in England, and police authorities in Wales. If a member acts in accordance with the granting of a dispensation, taking part in business otherwise prohibited by an authority's code of conduct would not result in a failure to comply with that code.

A standards committee may grant a dispensation to a member or co-opted member of an authority in the following circumstances:

- where more than 50% of the members who would be entitled to vote at a meeting are prohibited from voting **OR**
- where the number of members that are prohibited from voting at a meeting would upset the political balance of the meeting to the extent that the outcome of voting would be prejudiced.

Note: Although the Regulations are not explicit, political balance is a legal formula, set out in the Local Government and Housing Act 1989 and associated regulations. It applies only to relevant authorities and places an obligation on them to reflect the political balance of their elected members when determining who should sit on certain committees. It does not apply to parish councils.

Standards committees must ignore any dispensations that have already been given to others at the meeting to decide whether either of these criteria apply.

There are two **exceptions** to this:

- Members cannot be given a dispensation allowing them to vote in

dispensations

overview and scrutiny committees about decisions made by any body they were a member of at the time the decision was taken.

- A dispensation cannot be given to allow an executive member with a prejudicial interest in an item of executive business to take an executive decision about it on their own.

The dispensation granted may apply to just one meeting or it may be applicable on an ongoing basis. However, the dispensation cannot be used to allow participation in the business of the authority if it was granted more than four years ago.

Legal requirements for granting dispensations

- 1) Standards committees can grant a dispensation if more than 50% of members have a prejudicial interest in an item of business to be discussed at a meeting which is covered by their code of conduct. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). The list of meetings is set out in paragraph 1(4) of the Model Code of Conduct contained in the Local Authorities (Model Code of Conduct) Order 2007. These are meetings of:
 - the authority
 - its executive and its committees and sub-committees
 - any other committees, sub-committees, joint committees, joint sub-committees or area committees

of the authority.

- 2) Standards committees can grant a dispensation for an item of business if the political balance of a meeting would be upset enough to prejudice the outcome of the vote. They must ignore any members who have already been granted dispensations when doing this (see paragraph [*]). This means that due to the number of members who are prevented from voting the political balance of the committee is changed. This is similar to a provision that has been in existence in Wales for some time. As before, this does not apply to parish councils as they are not bound by the political balance rules.

[*]The requirement to ignore any members who have already been granted dispensations means that standards committees should disregard any previously granted dispensations in order to work out whether the two circumstances above apply.

So, if there were ten members on a committee, six of whom would not be able to vote on some business, all six can claim a dispensation. If previously granted dispensations were not disregarded, once two people had been granted dispensations, the remaining four would be ineligible because at that point 50% of the committee would be able to vote.

In addition it is necessary to consider if any of the exceptions set out above apply.

dispensations

Issues and criteria to consider when granting dispensations

The number of members in each political group on an authority could affect the eligibility to apply for a dispensation.

In situations where one political party has a large majority on an authority, and therefore on its committees, members of that political party will not be eligible to apply for a dispensation frequently under the criterion for political balance (see page 3). Where an authority has two or more political parties, and the number of members that each party has is fairly evenly balanced, the eligibility to apply for a dispensation will rise.

Clearly there is a difference between being eligible to apply for a dispensation and it being appropriate for that dispensation to be granted. We recommend that the standards committee considers the need for criteria to be applied to requests for dispensations. The committee will need to balance the prejudicial interest of the member seeking the dispensation to vote on an item of business, against the potential effect on the outcome of the vote if the member is unable to do so.

Considerations for dealing with dispensation requests

Q. Is the nature of the member's interest such that allowing them to participate would not damage public confidence in the conduct of the authority's business?

For instance, it is unlikely that it would be appropriate to grant a dispensation

to a member who has a prejudicial interest arising as a result of an effect on their personal financial position or on that of a relative. The adverse public perception of the personal benefit to the member would probably outweigh any public interest in maintaining the political balance of the committee making the decision. This is especially where an authority has well-established processes for members on committees to be substituted by members from the same political party.

However, the prejudicial interest could arise from the financial effect the decision might have on a public body of which they are a member. In such cases, it is possible that any public interest in maintaining the political balance of the committee making the decision might be given greater prominence.

Q. Is the interest common to the member and a significant proportion of the general public?

For example, the member might be a pensioner who is considering an item of business about giving access to a local public facility at reduced rates for pensioners. Some cautious members might regard this as a possible prejudicial interest. However, as a significant proportion of the population in the area are also likely to be pensioners, it might be appropriate to grant a dispensation in these circumstances.

dispensations

Q. Is the participation of the member in the business that the interest relates to justified by the member's particular role or expertise?

For instance, a member might represent the authority on another public body – such as a fire or police authority – and have particular expertise in the work of that body. Therefore it may be appropriate for that member to be allowed to address the decision-making body, even where there is no right for the public to do so. This would mean that the body would have the benefit of the member's expertise before making a decision which would benefit it financially.

Q. Is the business that the interest relates to about a voluntary organisation or a public body which is to be considered by an overview and scrutiny committee? And is the member's interest not a financial one?

In circumstances such as these, the standards committee might believe that it is in the interests of the authority's inhabitants to remove the incapacity from speaking or voting.

Practical guidance on the process for granting dispensations and recording them

The process for making requests for dispensations, the criteria that will be applied and the process that will be followed when the request is considered should all be clearly understood by those

concerned. Therefore, standards committees should set all this out and make it available to members.

A member must submit an application in writing explaining why a dispensation is desirable. Only the member can do this – they can't ask somebody else to do it on their behalf. It is sensible to send that application to the monitoring officer so that they can arrange for it to be considered by their standards committee.

A standards committee meeting must be convened to consider the application for a dispensation. Therefore, it is not possible to grant a dispensation as a matter of urgency to deal with emergency business.

The committee must consider the legal criteria set out on pages 3–4, including the exceptions. They must also consider any other relevant circumstances. These can include any local criteria they have adopted.

The committee will need to consider whether the member making the request will be allowed to make oral representations to the committee or whether the application will be dealt with only through written representations.

A standards committee has the discretion to decide the nature of any dispensation. For example, the committee may consider that it is appropriate that the dispensation allows the member to speak and not vote, or to fully participate and vote. The committee can also decide how long the dispensation should apply, although it cannot be longer than four years.

It is our view that the regulations do not

dispensations

allow standards committees to issue general dispensations to cover members for any situation where a prejudicial interest may arise. The regulations refer to circumstances that arise at “a meeting”. Therefore, we would expect most dispensations to cover a specific item of business at one meeting of the authority.

The decision must be recorded in writing and must be kept with the register of interests established and maintained under Section 81 (1) of the Local Government Act 2000.

Standards committees can refuse to grant a dispensation. The regulations allow for standards committees to use their discretion rather than impose an obligation for them to grant dispensations.

STANDARDS COMMITTEE**WORK PROGRAMME
1st October 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider progress with the current work programme.

This report is public

RECOMMENDATIONS

(1) That the report be noted

1.0 Introduction

1.1 A work programme for the forthcoming year was approved by the Committee in January 2009, and is updated at each meeting.

2.0 Proposal Details

2.1 The current work programme is attached to this report, and the progress made has been added in the final column.

2.2 Members will note that at the time of writing this report the government has still not issued any further consultation on or information about the proposed revised Code of Conduct. The latest information from Standards For England (formerly the Standards Board) is that a revised Code is expected to be ready in the late autumn. Members will also note that the proposed internal ethical governance survey is due to take place this autumn, and it is hoped that it will be possible to report the results to the January meeting.

2.3 The work programme is a living document and can be updated as and when required. The Monitoring Officer has added a review of the Protocol on Member/ Officer Relations to take place in January 2010. This is as a recommendation from an internal audit review of ethical governance.

3.0 Details of Consultation

3.1 There has been no consultation.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The report is for noting, although it is open to the Committee to make amendments to the work programme.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
None arising from this report.	
FINANCIAL IMPLICATIONS	
None directly arising from this report.	
SECTION 151 OFFICER'S COMMENTS	
The Section 151 Officer has been consulted and has no further comments.	
LEGAL IMPLICATIONS	
None directly arising from this report.	
MONITORING OFFICER'S COMMENTS	
The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.	
BACKGROUND PAPERS	Contact Officer: Mrs S Taylor
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	Ref:

STANDARDS COMMITTEE – WORK PROGRAMME 2009

NO	ACTION	MEETING DATE	PROGRESS
1.	Consider any further government consultation on proposed revised Code of Conduct	9th April 2009 (or special meeting to coincide with consultation)	At the time of writing this report, no further consultation had been issued.
2.	Consider revised Code of Conduct and arrangements for implementation	9th April 2009 or June 2009, or special meeting depending on timing	At the time of writing this report, no further information is available about the proposed revised Code of Conduct.
3.	Consider training requirements on new Code of Conduct for city and parish councillors	June 2009 or special meeting depending on timing	No progress with revised Code of Conduct. Training session for Morecambe Town Council held on 3rd September 2009. All other parish councils invited, and one councillor from Halton attended.
4.	Receive information about number of Code of Conduct complaints received and action taken	April and September 2009	Reported in April 2009 and report on this agenda
5.	Annual review of registration of interests	June 2009	Reported June 2009. One response still awaited at the time of writing this report.
6.	Consider Protocol for dealing with press inquiries about Code of Conduct complaints	April 2009	Approved April 2009
7.	Review complaint form and information for complainants	22nd January 2009 and June 2009	Minor amendments to the complaint form were approved on the 22nd January 2009. Further reviewed June 2009
8.	Review local assessment criteria, pre-hearing, hearing and investigation procedures	June 2009	Reviewed June 2009, and report on this agenda
9.	Review procedure for considering allegations of breach of Protocols	June 2009	Considered June 2009
10.	Receive report on previous Annual Assembly and consider future attendance	January 2009 and annually	Committee on the 22nd January 2009 decided not to send a member delegate to the 2009 Assembly

NO	ACTION	MEETING DATE	PROGRESS
11.	Consider any consultation on new Regulations relating to Joint Committees and Dispensations and/or contents of new Regulations	As required	Reported June 2009. Report on Guidance on Dispensations on this agenda
12..	Dealing with requests for dispensations	As and when required	
13.	Dealing with Code of Conduct complaints	Sub-Committees as and when required	
14.	Review Whistleblowing Policy and its operation	January 2009 and annually	Revised policy approved January 2009
15.	Review Planning Protocol	September 2009	Report on this agenda
16.	Review result of ethical governance survey	January 2010	Survey of officers and members to be undertaken by Internal Audit in conjunction with the Monitoring Officer during autumn 2009.
17.	Review of Member/Officer Relations Protocol	January 2010	

STANDARDS COMMITTEE**REVIEW OF THE PLANNING PROTOCOL
1st October 2009****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to review the Planning Protocol, and to recommend any changes to the Council Business Committee.

This report is public

RECOMMENDATIONS

- (1) That the Committee consider the amended Planning Protocol appended to the report, and recommend the Council Business Committee to approve it for inclusion in the Council's Constitution.**

1.0 Introduction

- 1.1 A review of the Planning Protocol is included in the Work Programme for this meeting.

2.0 Proposal Details

- 2.1 The Monitoring Officer has made some minor amendments to the Protocol, as set out in the document appended to this report. The amendments are tracked. These are mainly to reflect the fact that Code of Conduct complaints are now made to the Standards Committee rather than to Standards for England (formerly known as the Standards Board for England). The amendments also include those suggested by the Head of Planning and the Head of Democratic Services.

- 2.2 The Protocol has worked well in the past, and officers are satisfied that, with the amendments, it reflects current good practice.

3.0 Details of Consultation

- 3.1 The Monitoring Officer has consulted with the Head of Planning and the Head of Democratic Services whose staff service the Planning Committee meetings, and with the Senior Solicitor who provides legal advice.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 The options open to the Committee are to recommend the proposed amendments, to suggest other amendments, or to recommend that the Protocol not be amended at all. The Monitoring Officer would recommend the amendments as set out in the appendix.

CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
None arising from this report.	
FINANCIAL IMPLICATIONS	
None directly arising from this report.	
SECTION 151 OFFICER'S COMMENTS	
The Section 151 Officer has been consulted and has no further comments.	
LEGAL IMPLICATIONS	
None directly arising from this report.	
MONITORING OFFICER'S COMMENTS	
The report has been prepared by the Monitoring Officer in her capacity as adviser to the Standards Committee.	
BACKGROUND PAPERS	Contact Officer: Mrs S Taylor Telephone: 01524 582025 E-mail: STaylor@lancaster.gov.uk Ref:
None	

Part 7, Section 5 Protocol on Planning Procedure

1 Introduction

The purpose of this protocol is to provide Members with guidance regarding their role in determining planning applications, in particular, when interacting with applicants, objectors or developers. Ward members, who are not members of the Planning and Highways Regulatory Committee (referred to as the Planning Committee) but who want to address the Committee, also require guidance on interaction over their contact with applicants developers and objectors.

The protocol is designed to offer that guidance and help Members understand their role and the responsibilities associated with that role, and 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.

In addition, the Audit Commission has also raised the need for a protocol on planning in its document, "Probity in Planning". This protocol sets out detailed guidance for Members, but, in summary, the most important issues for Members to consider are as follows:

- The Code of Conduct, and in particular whether a Member has a personal interest, and if so whether that personal interest is also a prejudicial interest
- Aside from the Code of Conduct, whether there is any legal reason why a Member should not participate in a particular decision
- The need to exercise care and caution in any contact with applicants, developers and objectors
- The dangers of lobbying or being lobbied

2 Natural Justice

These principles apply throughout public administration. They are fundamental principles of administrative law and should be adhered to when determining any planning application.

The two principles of Natural Justice are :-

- (a) The rule against bias
- (b) The duty to act fairly/duty to hear both sides or the other side.

3 The Rule Against Bias

The first principle means that no Member should remain and be a party to a decision which affects their own interests. This is largely the process by which Members declare interests.

In addition to the common law rule against bias, Members must be mindful of the provisions of the Council's Code of Conduct with regard to personal and prejudicial interests, referred to below.

If Members are in any doubt about the application of the Code of Conduct, they should seek advice early, from the Monitoring Officer, Deputy Monitoring Officer or one of their staff. Failure to comply with the Code of Conduct may have implications for the individual Member,

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as there may be a complaint to the Standards Committee. There may also be implications for the decision making process, with criticism of the Planning Committee and possible challenge to the decision on the basis that a Member with an interest remained within the Council Chamber and tainted the integrity of the decision.

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4 **The duty to act fairly/hear both sides or the other side - Predetermination and Predisposition**

"Predetermination" is where a Member is closed to the merits of any arguments relating to a particular application, and makes a decision without taking them into account.

"Predisposition" is where a Member holds a view in favour of or against an application, but has an open mind to the merits of the argument before making a final decision.

Predisposition is acceptable; predetermination is not.

The decision making body must consider **all relevant information** before coming to its decision. The Member's mind should not be closed until the final decision is made. A Member's mind will be closed if they have already come to a decision on an application prior to entering the Council Chamber. This is predetermination. A decision will be open to challenge if a Member appears to have already decided how they will vote at the meeting so that nothing will change their mind. This impression can be created in a number of different ways such as quotes given in the press, and what they have said at meetings or written in correspondence.

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However, simply listening to or receiving viewpoints from residents or other interested parties, seeking information through appropriate channels, or making comments to residents, interested parties or other Members or appropriate officers will not constitute predetermination, provided that the Member makes it clear that they are keeping an open mind.

It is not a problem for Members to be "predisposed", holding a view but having an open mind and being open to persuasion against that view. This includes having formed a preliminary view about how they will vote before they attend the meeting, and/or expressing that view publicly, provided it is clear that their mind is not closed to countervailing arguments.

5 **Example of Maladministration**

The Local Ombudsman some time ago made a finding of maladministration against a Merseyside Council because a Member failed to declare an interest and leave the meeting. The Member had a house that was situated near to and affected by a planning proposal. The Member did not declare an interest and remained in the Chamber and voted on the application.

It is important to the integrity of the Planning process and to open and honest governance that justice must not only be done to the planning application – but also that it is seen to be done, thereby giving the public confidence in the system.

There have also been examples of maladministration where Members have encouraged their colleagues to set aside the advice of professional officers by introducing factors which do not amount to material planning considerations. These can include personal circumstances, or land ownership issues. Members should always be cautious and stick only to valid planning considerations.

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6. Declarations of Interest and Leaving the Chamber

Personal interests and prejudicial interests are defined in Part 2 of the Council's Code of Conduct. It is important to note that if an interest does not fall within the definition of a personal interest, it cannot be a prejudicial interest.

Under the Code of Conduct, where a decision might reasonably be regarded as affecting the well-being or financial position of a Member, or that of a relative or close associate of theirs, or of a body to which the Member is appointed by the Council, or a body of which the Member is a member which exercises functions of a public nature, is directed to charitable purposes, or whose principal purposes is the influence of public opinion or policy the Member must declare a personal interest. The phrase "close associate" is not defined in the Code, but covers both social and business associations. The Code of Conduct also requires Members to declare a personal interest in any matter that relates to an interest included in their register of interests.

Where a Member has a personal interest as set out in the Code of Conduct, they must give careful consideration as to whether that interest is also a prejudicial interest (that is, one which a member of the public with knowledge of the facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest). In other words, the interest must be perceived as likely to harm or impair the Member's ability to judge the public interest. Simply knowing the ~~applicant does not necessarily equate to a~~ prejudicial interest.

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The Code of Conduct provides that a prejudicial interest does not arise where the decision does not affect the financial position of the Member or their interests, or does not relate to a licensing or regulatory matter affecting the Member or a person or body in which they have a personal interest.

If the personal interest is not a prejudicial interest, the existence and nature of the interest must be disclosed to the meeting.

Where a Member has a personal interest which is also a prejudicial interest under the Code of Conduct, the general rule is that they must leave the chamber – they are not permitted to return to the public gallery for the debate and they should not be seen by other Members when they are making the decision. This is a requirement of the Code of Conduct. If a Member who had declared an interest was present or could be seen to watch the proceedings, this could be sufficient to taint the process.

However, as an exception to the general rule, the Code of Conduct does now allow a Member who has a personal and prejudicial interest to participate in the same manner that would apply to an ordinary member of the public, that is, in the public participation part of the meeting, but the Member must then leave the room immediately after making such representations. This reverses the decision of the Court of Appeal in Richardson -v- North Yorkshire County Council, and means that Members are no longer placed in a more disadvantageous position than ordinary members of the public.

Dispensations from the Standards Committee are available in limited circumstances, where the existence of prejudicial interests would mean that the meeting could not otherwise be quorate.

When declaring interests at meetings, Members should make it clear what level of interest they are declaring, and whether the interest prevents them from taking part in the decision making process.

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7. **Party Politics**

A Member must not blindly follow the recommendations of their political party. A decision on a particular planning application should not be dictated to by party politics. Party whips should never be used. The Member is part of the decision making body. As far as planning applications are concerned the decision making body is the Planning Committee. That Committee sits in a quasi-judicial manner and each decision is made on its own merits, within the Development Plan framework, supported by legislation, government advice and other Council land use policies. Therefore each decision has to be made on the information put before the Committee and should take into account the development plan, the impact of the individual development and any individual site characteristics – not party politics.

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8. **Allegations of Bias**

As a Member of the Planning Committee the time for decision making is after the Members have heard all relevant considerations i.e. after the application has been presented to the Members in the Committee meeting and when the presentation of the application is completed. Therefore, a decision should not be made before the agenda is sent out, at a site visit or immediately before the meeting begins. If a Member has made their mind up before the application is fully presented then this renders the decision open to challenge. This would be on the basis that the application was predetermined, was not considered fairly and that the Member's conduct showed bias. To predetermine an application flies in the face of the principle of the rule 'to hear both sides'.

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Council, at its meeting on the 19th November 2008, resolved that Cabinet Members should not sit on the Planning Committee for items directly related to those which have been previously considered by Cabinet (whether they were present for that particular Cabinet item or not). The rationale for this is that where the Council is the applicant or the landowner, and a Member is both a Member of the Planning Committee and also a Cabinet Member with ongoing land-owning responsibilities, it is arguable that the issue of predetermination and bias might arise as a result of the Member's perceived proximity to the proposal through discussions in Cabinet. The Council resolution removes this risk.

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However, the simple fact that a Member has been involved in a decision to promote the development of land in the public interest, does not necessarily prevent them from making decisions on the matters of detail. Members approving specific land use allocations in a Local Development Framework for example, would not be prevented from deciding subsequent planning applications. They would be expected to use their decision making abilities to ensure that schemes conform with the requirements of the Framework.

9. **Media Exposure**

A Member should never make any public declaration on an application until the application has been determined. If a Member makes a statement that is one-sided prior to the application being determined then that Member is at risk from an allegation of bias i.e. they have not kept their mind open until all matters are before them. In these circumstances it may be inappropriate for the Member to take part in the decision making process to ensure the decision is not tainted. This will be particularly important where there is adverse public

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reaction to a planning application in the local press some time before the application has received a recommendation from Officers.

10. **Parish Councillors**

A Member of the Planning Committee who is also a parish councillor may speak and vote at both parish and City Council level on the same planning issue (unless the application has been made by the parish council). Members who take this course of action will need to declare membership of the parish council as a personal interest at City Council level.

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As indicated above, Members are under an obligation to approach decision-making with an open mind, prepared to listen to all sides of the argument. Dual-hatted Members who choose to speak and vote at parish and City Council level will need to make it very clear that their vote at parish level represents a preliminary view and that they will reconsider the matter afresh at City Council level. Failure to do so may result in a challenge on the grounds of predetermination.

Different considerations will apply if the parish council is the applicant in relation to a particular planning application. In that situation a parish councillor would be likely to have a prejudicial interest at the Planning Committee.

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It must always be remembered that debate at parish council meetings takes place without professional advice from a Chartered Town Planner. It is likely, therefore, that considerations may involve matters not properly restricted to planning considerations. City Council Members involved in such discussions should take specific care to qualify their views accordingly.

11. **Lobby Groups**

A Member of the Planning Committee who is a member of a lobbying group which has publicly expressed support for or against a planning application will need to consider whether they have a personal and prejudicial interest, and whether there is any other reason outside the Code (such as bias or predetermination) why they should not participate in the decision.

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Members are required to declare a personal interest if they are a member of a group that lobbies or campaigns about an issue that comes up for discussion or decision. However, a member will not have a prejudicial interest in a developer's planning proposals against which they and their lobby group campaigned if they or any other person or body in which they have a personal interest are not affected financially by the matter. It is not relevant for the purposes of the revised Code that the planning proposal will impact on the aims of the lobby or campaign group the member belongs to. The Code is focused on the actions of individuals and as such is about preventing improper personal advantage.

A Member who belongs to a general interest group, such as a local civic society, should disclose a personal interest where that organisation has made representations on a particular proposal, and should make it clear that the Member has reserved judgement and the independence to make up their own mind on each separate proposal.

Further guidance can be obtained from the Standards Board publication "Lobby groups, dual-hatted members and the Code of Conduct", and the Standards Board Occasional Paper "Predisposition, Predetermination or Bias, and the Code".

12. **Contact by an Applicant Agent or Developer**

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It is inevitable that Planning Committee Members will be approached frequently by a variety of people during the planning process. It is therefore important that Members of the Committee are clear on the nature of the advice and the comments that they give.

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Members of the Planning Committee should avoid giving any commitment or the impression of any commitment or view that is held regarding any particular planning application yet to be determined or any matter that may result in the submission of a planning application. It is inappropriate for a Committee Member to meet with the Applicant or Developer to discuss the proposals. Instead they should be directed to the Head of Planning Services and his staff. Equally, any Member of the Committee requiring further information about the application should contact the Head of Planning Services and his staff.

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If a meeting or telephone call does takes place then Members of the Committee are advised to avoid comments which infer predetermination such as:

- 'I am completely against any development there'
- 'I am all for any kind of economic regeneration'
- 'The developer X normally builds to a high standard'

Recent national changes in the planning system have led the Government to encourage Member involvement in major planning applications. The department for Communities and Local Government stated in 2008 that "for large, complex development of strategic importance, Members should be engaged in the process".

There may therefore be circumstances where officers of the Planning Service invite Members to participate in meetings regarding major, complex planning applications. These will be minuted by Planning Officers and will be likely to involve not just Members and the applicant/developer, but statutory planning consultees too.

During such meetings, it is important that the decision-making function of Members is not compromised. Therefore, Members should not express views about the planning merits of the proposal that would lead to allegations of predetermination, nor should they engage separately with the Developer. Their attendance at the meeting is to enable them to be informed of the proposals and make suggestions (where necessary) about matters that they would like the future planning application to address.

Where planning proposals do not involve major, strategic development, a meeting between a Member of the Planning Committee and the applicant or developer is unlikely to be facilitated by the Planning Service, and will almost certainly be unnecessary. In the rare circumstances where a meeting does take place between a Member and the applicant or developer, it is essential that an officer is present and the meeting properly minuted. The Audit Commission states that in these circumstances "all meetings should be attended by officers, fully minuted and reported to Committee in order to ensure transparency". Therefore those minutes should be reported to the Planning Committee prior to any decision being made.

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Any significant contact with the applicant or other parties should be reported to the Head of Planning Services, explaining the nature and purpose of the contacts and the member's involvement in them.

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13. **Presentations by applicants/developers**

A Member of the Committee should not attend a planning presentation unless an officer is present and/or it has been organised by officers. A Member should be aware that a

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presentation is a form of lobbying and should not express any strong view or state how they or other Members might vote.

Where a public meeting is arranged by a developer to present to local residents a scheme which the developer intends to submit, there is nothing to prevent Members attending to obtain information, but they should not make any comment.

~~Where a meeting has been arranged by the Planning Service in respect of proposals of major, strategic importance, there is nothing to prevent members from attending. However, their attendance must be in accordance with paragraph 12 of this Protocol.~~

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14. **Approach by a Constituent**

If a constituent approaches a Member about an application Members can give advice on planning procedure rules and policy so far as they are able but it is always advisable to direct the constituent to staff of the Planning Service in any event. When speaking to constituents Members must not give any impression of any commitment to the application itself.

15. **Approach by a Non-Constituent**

If a non-constituent approaches a Member, Members can advise the person on planning procedure rules and policy as far as they are able or alternatively ask them to contact their own Ward Member or the Head of Planning Services and his staff.

16. **Disclosure of Information**

It is important that Members are clear on what information is a matter of public record and what information is not. Details contained within the planning application are open to the public and the planning process and planning policies are all within the public domain. However, informal observations of the Planning staff will not be information available to the public. If a Member wishes to rely on the observations or comments of the officer then the Member must ask the officer if the information is of a public or confidential nature. If the Member intends to refer such information to a member of the public i.e. not a Council Member, they must make this clear to the officer.

17. **Hospitality Offered to Members**

It is advisable in all circumstances to simply refuse any hospitality. To accept creates the risk that there has been undue influence on the planning process. In the rare event that the hospitality of an estimated value in excess of £25 is accepted it must be registered as a personal interest under Paragraph 8 of the Council's Code of Conduct. It must also be declared as a personal interest at any meeting within the next three years where an item of business relating to the source of the hospitality is considered..

18. **Lobbying of Planning Officers**

Members must recognise that they are part of the organisation which employs professional staff who will make their recommendations on planning applications. Public confidence in the planning system is dependant on planning officers being able to reach open and impartial recommendations on applications, based on lawful planning considerations only, without being improperly influenced in reaching their conclusions by political pressure. Whilst it is entirely proper for Members to enquire about progress on applications and to ask for clarification about the reasons for any recommendation, they must take particular care to ensure that they do not give the impression of applying pressure to officers to make any

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changes to their recommendations. To do so would leave them open to accusations of applying inappropriate pressure in the form of lobbying.

19. **Lobbying of the Planning Committee by other Members**

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Members should not give an impression of any commitment or view on the application itself and Planning Committee Members must consider all matters before forming a view. If the lobbying Member is an applicant the Committee Member must critically assess their relationship to the Applicant-Member. The test is to ask yourself 'is the relationship such that a reasonable person would consider that remaining in the Planning Committee meeting when the decision is made would give the impression of bias'. Simply being a member of the same political party does not necessarily equate to a personal or prejudicial interest but Members must ask themselves about their relationship, e.g. Are they close associates outside the political arena? Do they socialise with each other? .

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20. **Social Contact**

Members of the Planning Committee should minimise their direct social contact with known developers and agents, especially when developments are contemplated or applications are being proposed or when controversial decisions are likely to be needed.

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21. **Site Visits – Informal or Formal**

Again, if Members of the Planning Committee, whether or not on a site visit, enter any premises which –

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- are the subject of/ affected by a planning application or
- are known to be likely to become subject to or affected by a planning application

for any purpose in connection with such an application/proposed application, the Member should be careful to use the inspection purely as a fact-finding exercise and not express any opinion on the merits of the application. Members must not give any kind of indication of what their views of the application are at this stage as they would be at risk of predetermining the issue.

It is recommended that a member of the Planning Committee should not enter a site which is subject to a proposal, other than as part of an official site visit, unless the member feels that it is essential to visit the site other than through attending the official site visit, and the member has first spoken to the Planning Officer about their intention to do so and why (which will be recorded on the file).

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22. **Purpose of Formal Visits**

The purpose of a Planning Committee site visit is to give Members the opportunity to see the prospective development site and to see it in context, in relation to the surrounding areas and the neighbouring uses. The Planning Officer will normally identify the site and make a short factual presentation explaining the proposed development and perhaps highlighting issues which initially prompted the site visit. The Planning Officer will answer, where possible, questions raised by Members.

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Site visits are not intended to pre-empt the debate. Questions should therefore relate to matters of factual information about the site, the development and the surrounding area rather than a detailed debate regarding the principle or merits of the proposal. Any detailed debate regarding the above should await the formal Committee meeting when all Members of the Committee and members of the public who attend can hear the arguments in a proper setting.

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23. **Public Attendance at Formal Site Visits**

Members will often be met by numbers of local residents at a site visit as they are often high profile cases which are under consideration. It is important that the Planning Officer or the Democratic Support Officer explains clearly the purpose of the site visit to residents before the site visit commences. Members of the public can listen to the officers' presentation but should not join in any subsequent discussion. Public views or objections will be fully presented or reported at the Committee meeting and should properly form part of the overall debate and discussion at that time.

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Members should avoid getting into individual dialogue with local residents, although it is appreciated this can be difficult to avoid. The Chairman can invite a spokesperson for the residents to answer any specific questions Members may have but this should not become a general debate about the proposal. If there is a request to visit the site from a particular position or location this can be undertaken at the Chairman's discretion. If it is agreed, all Members should accompany the Chairman if possible.

The applicant or his representative will also be invited to attend the site visit. They are present simply to answer any questions the Committee Members may have but should not address the Members on the general merits of the case. Again the Planning Officer or Chairman should explain this situation to the applicant or representative if necessary.

None of the above text on site visits is intended to stifle debate or prevent local residents from having their say. The proper place for such a debate is however at the Committee meeting when neighbour/local views will be properly reported and a proper discussion in a public forum can take place.

24. **Ward Members Speaking at Planning Committee who are Not Members of the Planning Committee – Contact by the Applicant, Developer or Objector**

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When a Ward Member speaks at a Committee it is important that they make it clear whose views they are expressing. Are they speaking for themselves only? Are they speaking on behalf of their Ward? Are they speaking on behalf of a group of residents? An important difference between Planning Members and Ward Councillors who are not Members of the Planning Committee is that Ward Members are permitted to express a view prior to entering the Council Chamber. Also, a Ward Member can inform other Members of their own view. If they are asked to meet with a party who has an interest in an application it should be made clear to that party that the Ward Member cannot lobby Members of the Planning Committee – they can inform the Members of their concerns etc but they cannot lobby.

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If the applicant/objector/third party asks for information Members should advise them to contact the Planning Service staff. The Ward Member can comment on how they would like the decision to be determined but must not give any impression of interfering with the normal democratic process. Comments like 'I will have a quiet word with the Chairman' 'the Group will all vote together' or 'it will be sorted' are unacceptable. They infer predetermination and interference, which at the very least is against an open and transparent planning system.

Instead the Member should make it quite clear that they are able to express an opinion to the Committee but the final decision will be made by the Members when they have considered all matters including the Local Development Plan.

When a non Planning Committee Member addresses the Committee, it is advisable that they disclose to the Committee any contact they have had with the applicant and/or agent and/or interested party. For example if a Ward Member meets with a developer and is in favour of

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an application they should state ‘I am the Ward Member and I am here to represent my own views on this matter. I have spoken to the Developer and I have looked at the plans in detail. I am for the application and consider the benefits are ...’. Or ‘I am the local Ward Councillor and I am here to represent the views of what I consider is the majority of the residents of my Ward. I have had numerous telephone calls and letters complaining about this. I have met with local resident groups and I am unhappy with the proposal before Members because ...’

A member of the Planning Committee may take the opportunity to exercise separate rights as a Ward Councillor where the Member has fettered his/her discretion to participate in the decision making. However, the Member should make it clear before commencement of the item that they are speaking in this capacity, and should remove themselves from the Committee seating area for the duration of that item.

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25. **The Public Participation Process**

With the introduction of the public participation process members of the public now have the opportunity to address the Planning Committee. Each individual has 3 minutes to speak. Ideally the person would refer only to planning issues. However realistically this is unlikely to occur and in practice they may refer to non-planning and development matters.

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Planning Committee Members need to sift through such presentations and concentrate on the planning and development considerations, distinguishing between issues that are and are not relevant to the planning decision. Issues that are not planning matters need to be dismissed or given very little weight, while planning and development issues should be taken into account and given great weight. Personal circumstances and financial details are rarely, if ever, determining issues. Members have to give proper weight to the Development Plan and other material considerations.

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As indicated above, a Member with a personal and prejudicial interest may take part in the public participation process, but must withdraw from the meeting immediately after they have addressed the Committee.

26. **The Decision Itself**

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 a planning application made under the Planning Acts shall be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Material considerations are anything that relates to the use and the development of land. “Material considerations must be genuine planning considerations, i.e. they must be related to the purpose of planning legislation, which is to regulate the development and use of land in the public interest.” PPG1 para. 50. ‘In the public interest’ does not mean determining planning applications on the view of the local residents. Local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless that opposition or support is founded upon valid planning reasons which can be substantiated” para. 60 of PPG1.

If there is public opinion against an application then Members must ask themselves “are the objections based on planning grounds?” and if they are “is there evidence to support them?” If the answer to one or both of these questions is ‘no’, then Members should not permit the objections to determine the outcome.

A Member who is proposing, seconding or supporting a decision contrary to officer recommendations or the development plan should clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to

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the vote and be recorded. It may be necessary to justify the resulting decision by giving evidence in the event of any challenge.

27. **Code of Conduct**

This guide is ancillary to the Council's Code of Conduct and is designed to help Members understand their role in the Planning process. Its production is recommended by District Audit ('Probity in Planning').

28. **Enforcement of the Protocol**

Members need to be aware that this Protocol is for guidance. The breach of its terms will not necessarily result in the decision being invalidated, but may well lead to a decision being challenged. A breach of the Council's Code of Conduct may lead to a complaint to the Council's Standards Committee, and will be dealt with in accordance with the statutory procedure introduced by the Local Government and Public Involvement in Health Act 2007 and Regulations thereunder. A breach of this Protocol is not in itself a breach of the Council's Code of Conduct, but any complaint of a breach of the Protocol would be investigated by the Monitoring Officer and subsequently reported to the Standards Committee.

If Members have any concerns about the above they should contact the Head of Legal and HR and/or the Head of Planning Services.

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