

Standards Committee <b>Meeting</b>	<b>Agenda Item: 4</b>
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<b>Meeting Date</b>	3 August 2010
<b>Report Title</b>	Members' Planning Code of Good Practice
<b>Portfolio Holder</b>	Cllr Gerald Lewin
<b>SMT Lead</b>	Pete Raine
<b>Head of Service</b>	James Freeman
<b>Lead Officer</b>	James Freeman
<b>Key Decision</b>	<b>No</b>
<b>Classification</b>	<b>Open</b>
<b>Forward Plan</b>	<b>N/A</b>

<b>Recommendations</b>	1. Agree to adopt the Local Government Associations 'Probity in Planning: the role of Councillors and Officers – revised guidance note on good planning practice for councilors and officers dealing with planning matters', May 2009, as a supplement to the Members Code of Conduct under section 51 of the Local Government Act 2000.
	2. Agree the accompanying supplementary Procedure Guidance Notes as set out in appendices (ii), (iii) and (IV).
	3. Agree delegation to Head of Planning in consultation with Executive Member for sustainable Planning and the Chair of the Planning Committee to make minor changes to Procedure Guidance Notes following site visits to other Planning Authorities during the Autumn 2010.

### **Purpose of Report and Executive Summary**

- 1.1 The purpose of this report is to agree a Members' Planning Code of Good Practice
- 1.2 This Code of Good Practice is useful to both Councillors and Officers who become involved in operating the planning system. It is not therefore, restricted to professional town planners and planning committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

## **2 Background**

- 2.1 All Councillors' have a key role to play in the planning system and in order to ensure they feel part of a pro-active, inclusive and efficient system, they need to be made aware of their potential roles and associated responsibilities.
- 2.2 All members should have an opportunity to represent the local community and to express the views of the local community on a planning application or planning issue. This is a vital part of the planning process and of local democracy.
- 2.3 As a Planning Committee member, you have a choice as to whether you wish to act as an advocate for your community or whether you wish to have responsibility for decision making on behalf of the Borough as whole. The way in which you conduct yourself and your role at a Planning Committee can be determined by the role you decide to take. Both roles are important and vital for an effective and fair planning process. You may wish to add something about the LDF Panel – as the Code of Conduct is more relevant there than the rules on predetermination and bias.

## **3 The Local Government Association's Guidance Note on Probity in Planning: the role of Councillors and Officers.**

- 3.1 It is intended that the Local Government Association's publication: 'Probity in Planning: the role of Councillors and Officers' should be adopted by the Council as the Members' Planning Code of Good Practice – see Appendix A, and supplemented with a series of local procedure notes.
- 3.2 The aim of this code of good practice is 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. The key purpose of Planning is to control development in the public interest. The role of Member of the Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.
- 3.3 The code is designed to promote greater mutual support and understanding between Members and Officers to the benefit of all involved in the planning process. It is also designed to give the public greater confidence that Swale Borough Council intends to carry out its planning responsibilities fairly and openly.
- 3.4 The LGA Guidance Note sets out:
  - the general role and conduct of councillors (and Officers);

- provides advice on predetermination, predisposition or bias;
- how Councillors' in their various roles should deal with lobbying and pre and post application discussions with developers or objectors;
- how Councillors should conduct themselves during committee meetings and site visits; and
- provides guidelines within which the Council should conduct its meetings including public speaking and dealing with officer reports and recommendations.

3.5 Additional supplementary advice accompanies the Good Practice Guide to reflect the individual circumstances within Swale Borough Council. These cover:

- Public Speaking at Meetings (Procedure Note A)
- Submission of additional Information (Procedure Note B)
- Planning Committee Site Visits (Procedure Note C)

3.6 At this stage the Committee is requested to agree the documents subject to delegated powers to Head of Planning to make amendments in consultation with Executive Member for Sustainable Planning, the Chair of Planning Committee and the Monitoring Officer following site visits to other Local Planning Authorities during the Autumn 2010.

3.7 It is intended that further Supplementary Procedure Notes will be published to provide further advice and guidance for Members and Officers. These may include:

- Pre Application Meetings regarding 'Major' development (Development Forums);
- Members' Input into S.106 Agreements;
- Scheme of Delegation to Head of Service.

### **3.8 When the Code of Good Practice applies**

This code applies to Members at all times when involving themselves in the planning process. (This includes, where applicable, when part of decision making meetings of the Council in exercising the functions of the Planning Authority or when involved in 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.

## **5. Relationship to the Members' Code of Conduct**

- 5.1 This Code supplements the Code of Conduct for Members adopted by the Council under Section 51 of the Local Government Act 2000. In support of the Council's Local Planning Authority responsibilities, this code covers the conduct of both Councillors' and Officers.
- 5.2 The potential consequences of Members' not abiding by this Code of Good Practice are:
- Increased risk to the Council of proceedings on the legality or maladministration of the related decision; and
  - That individual Members would be at risk of either being named in a report made to the Standards Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Standards Board for England.

#### **4. Alternative Options**

- 4.1 The Council could attempt to establish its own Good Practice code rather than adopt the Local Government Associations Guidance Note.
- 4.2 Not adopting Good Practice Code would undermine awareness of Members and officers of how to conduct themselves when considering local planning issues and possibly lead to increased risk of maladministration, bias and/or costs.
- 4.3 The LGA's code was produced with reference to Standards for England's guidance and ASCeS' and draft code. With the uncertainty over the future of the local standards regime, committing limited resources to produce a local guide may not be acceptable at this stage.

#### **5 Consultation Undertaken or Proposed**

- 5.1 All members of the Planning Committee and Local Development Framework Panel have been given an opportunity to comment on a draft document.
- 5.2 The proposals set out in this paper were presented to and gained the general support of the Planning Committee Working Group, although they recognised that many members of the Planning Committee and members of the public would have strong feelings about removing public attendance and speaking rights at Site Meetings as proposed in Procedure Note 3, Appendix IV.

#### **6 Implications**

Issue	Implications
Corporate Plan	There should be greater transparency and understanding of the Planning system. This should lead to improved customer care and

	performance.
Financial, Resource and Property	None identified at this stage.
Legal and Statutory	<p>The rules set out in the Members' Code of Conduct must be always be complied with. The rules in this Planning Code of Good Practice seek to explain and supplement the Members' Code of Conduct for the purpose of supporting the Council's Local Planning Authority responsibilities.</p> <p>The potential consequences of Members and Officers not abiding by this Code of Good Practice are:</p> <ul style="list-style-type: none"> <li>• Increased risk to the Council of proceedings on the legality or maladministration of the related decision; and</li> <li>• That individual Members might be at risk of breaching the Code of Conduct, resulting in a complaint being made to the Standards Committee</li> </ul> <p>Case law has acknowledged that in some circumstances it is appropriate to participate in some pre-application discussions. The LGA Code of Good Practice sets out the steps that should be taken, or avoided, to ensure that the Council does not face challenges to decisions it takes, although ultimately those challenges may not be successful.</p>
Crime and Disorder	None identified at this stage.
Risk Management and Health and Safety	The main risks relate to the legal and statutory responsibilities of the Council as a Local Planning Authority – see above.
Equality and Diversity	The Code of Good Practice should provide a sounder basis for ensuring a fair and equal approach to local planning matters
Sustainability	None identified at this stage.

## 7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: *'Probity in Planning: the role of Councillors and Officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters'*, Local Government Association, May 2009.

- Appendix ii: Procedure Guidance Note 1 – Public Speaking at Planning Committee meetings
- Appendix iii: Procedure Guidance Note 2 – Submission of Additional Information at Planning Committee meetings
- Appendix iv: Procedure Guidance Note 3 – Planning Committee Site Visits

## **8 Background Papers**

**8.1** None.

MEMBERS' CODE OF GOOD PRACTICE

PROCEDURE NOTE A

## **Member and Public Speaking at Meetings**

It is important that clear protocols are in place to consider whether applicants, supporters, ward councilors, parish councilors and third party objectors are able to make presentations at the Planning Committee.

Public Speaking should be undertaken in the following order:

1. Ward Councillor (Not a Planning Committee Member)
2. Parish Council representative
3. A Third party objector who has made a representation during the formal consultation period of the planning application concerned (or a spokesperson on behalf of an objector(s))
4. A Third party supporter who has made a representation during the formal consultation period of the planning application concerned (or a spokesperson on behalf of an objector(s))
5. The Applicant (or agent acting on behalf of applicant)

Applications to speak at the Committee must be made directly through Democratic Services.

The selection of a third party objector or supporter will be made on a first served basis subject to them having made a formal objection through the planning application consultation process.

A maximum of **3 minutes** will be allowed for any speaker.

**If the member has a prejudicial interest they can speak in one of the above categories, must avoid doing anything that might influence the committee and must leave the room completely when they have finished speaking.**

**If the member has committed themselves to a particular point of view, they can speak in one of the above categories, but not vote nor sit with the committee.**

**Members should refer to the relevant sections of the LGA guidance about Predisposition, predetermination and Bias and Prejudicial Interests.**

If you wish to retain your ability to vote then this should be done on the basis of what is appropriate for the Borough as a whole and be willing to consider all relevant information

provided to you until the Committee comes to vote on the item. However, you may declare a pre-disposition on a planning application at any stage always making it clear that your position is subject to hearing all the arguments involved.

**Additionally, Planning Committee members should not 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. If any Members are seen to be communicating with the public during the meeting they may forfeit their right to vote on that item due to the potential allegation of bias.

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## **APPENDIX III**

### **Members' Planning Code of Good Practice**

#### **Procedure Note B**

#### **Submission of additional information**

Planning Committee members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should acknowledge the correspondence by saying that the matter has been referred to the Head of Planning Services.

Whilst letters of objection can be received within 24 hours of the Planning Committee meeting which are addressed to or referred to the head of Planning services, NO new substantive evidence or information can be submitted to the Planning Committee within 24 hours of the meeting taking place. For clarity, this includes any photos or correspondence from potential speakers. This will be made clear to those wishing to speak at the meeting.

All new evidence and information should be sent through to the Head of Planning Services before the 24 hour deadline. He/She will ensure the information is circulated accordingly and the presenting officer refers to the correspondence or evidence in their presentation to the Committee. The officer may also wish to respond to the issues raised as appropriate.

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### **Procedure for Member's site visits and meetings**

Site Inspections by a Committee can be helpful in reaching a decision on issues where site circumstances are clearly fundamental to the decision. This is true particularly when the issues concern, for example, visual impact, the character of an historic building or the effect of development on local amenity. However, site inspections are costly, cause delay to decisions and are an unsuitable place for holding a debate. The criteria for holding site inspections are:

- the character or appearance of the development itself is a fundamental planning consideration;
- a judgment is required on visual impact;
- the setting and surroundings are fundamental to the determination or to the conditions being considered.

They should only be held when inspection of the site is relevant to the material considerations applicable to the planning application. Any Member of the Committee may request a site visit, but reasons based on the above criteria must be stated, and will be minuted. No formal decisions are made at the site meeting.

Site visits should not be used to express arguments about the merits, or otherwise of the planning application which should be confined to the Planning Committee meeting itself. Site visits should be used to gain a better knowledge of the site characteristics of the proposal and the surrounding area and to gain a better understanding of the site specific issues involved. Therefore the main purposes of site visits are:

- (i) to enable Councillors to obtain a better understanding of the site aspects of the proposal concerned and related issues involved
- (ii) to provide officers and/or the applicants and/or their agents with the opportunity to more fully explain the proposed development and to answer Members' questions in relation to site specific issues raised;

### **Conduct of site meetings**

The Committee Members who proposed and seconded the need for a site visit should make themselves available to attend the site visit (the minutes of the Planning

Committee will refer to proposer and seconder). In the event of unavailability a substitute should attend.

If access to private land is necessary for a site visit by the Committee, officers will secure the prior agreement of the landowner, explaining that Members' will not hear from any interested party while at the site unless invited to do so by the Chair. Discussion and debate should take place at the Planning Committee, but questions and answers are permitted

The Chairman will decide where best to commence the site meeting. This may be on or near the application site. Sometimes, neighbours may wish the Members of the Committee to view a proposal from their property as well. It is entirely at the discretion of the site owner/applicant and other parties as to whether or not they will allow anybody attending the visit/meeting on to their land. The Chairman will decide whether or not it is necessary or helpful for Members to view a proposal from different vantage points.

#### Step 1

The Site Meeting normally commences with an introduction by the Chairman of the committee with other Members being asked to identify themselves and declare any interests they may have in the application.

#### Step 2

The Planning Officer in attendance then explains the proposal within the context of the reason for the site visit and summarises the associated planning issues and outlines key relevant objections received in relation to those issues. In conclusion he/she states the officer level recommendation and the reasons for the recommendation.

#### Step 3

The Chairman then usually invites Members of the Planning Committee to ask questions of the planning officer (and of other Council or Kent County Council officers who may be present, depending on the nature of the proposal). The Chair will then invite local Ward members' to ask questions. Comments / questions should only be made through the Chairman and only when invited to do so. Finally, the applicant is invited to highlight any site specific comments to answer any factual questions about the application raised previously.

It should be appreciated that no formal decisions are made at Members' site meetings. However, following a site meeting the relevant application will be placed on the agenda of the next available meeting of the Planning Committee when a decision can reasonably be expected to be reached.

Public speaking will only be permitted at the subsequent Planning Committee where a decision to defer for a site visit was made in advance of public speaking arrangements at the previous meeting.

As a member of the relevant Planning Committee when on site visits you should not make any comments that could create an impression that you had already formed a view on the merits of the application. No decision on the application should be made until the formal meeting of the Planning Committee at which the application is to be considered, when they will have before them all necessary information to be able to make an informed decision, including a record of the site visit.

The Democratic services representative will ensure that there is a written minute of the site meeting and this will be presented to the relevant Planning Committee.

Summary:

- Visits will be conducted in a formal manner.
- The Chairman or Vice-Chairman will open the meeting, and remind members of its purpose and conduct.
- Officers will highlight issues relevant to the site inspection. If issues are raised which necessitate consultation with the applicant or his agent, this should be formally recorded.
- Local Ward Members will be asked to ask questions relevant to the site inspection.
- Lastly, the applicant (or representative agent) will be invited to respond to any of the questions raised.
- The Chairman or Vice-Chairman will close the meeting.
- There will be **no** debate about the general merits of the application and no decision will be made.
- Formal minutes of the Site meeting will be made available at the relevant Planning committee meeting.

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