

HAMBLETON DISTRICT COUNCIL

Report To: Audit, Governance and Standards Committee
30 October 2013

From: Director of Corporate Services

**Subject: LOCAL CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH
PLANNING MATTERS**

All Wards

1.0 BACKGROUND:

- 1.1 The Council's Constitution contains a Local Code of Conduct for Members and Officers dealing with Planning Matters. This Local Planning Code supplements the Council's Code of Member Conduct and Officer Code of Conduct which are of general application. As the name suggests, the Planning Code deals specifically with Planning related matters.
- 1.2 This report suggests amendments to the Local Planning Code.

2.0 SUGGESTED CHANGES:

- 2.1 In April 2013 the Local Government Association (LGA) published its latest version of "Probity in Planning". This provides general guidance on planning-related matters and suggests that a number of things should be dealt with in any Local Planning Code.
- 2.2 Attached as an Annex to this report is the Local Planning Code, amended to reflect the changes suggested by the LGA. The amendments are highlighted.
- 2.3 Making the amendments will bring the Council into line with national good practice.

3.0 RECOMMENDATION:

- 3.1 It is recommended that the Committee recommend Council to adopt the revised Local Code of Conduct in the Annex.

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Background papers: Probity in Planning for Councillors and Officers: Local Government Association/Planning Advisory Service (April 2013)

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LOCAL CODE OF CONDUCT FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS

1.0 GENERAL CONDUCT:

1.1 This Code recognises the different but complementary roles of Members and Officers in offering a public planning service:-

- Officers are responsible to the Council for providing advice, reports and recommendations and some decisions under the Council's Scheme of Delegation.
- Members are responsible for determining applications.

1.2 Instructions to Officers can only be given through a Council, Cabinet or Committee decision. Members can write or speak to Officers to set out their views to ensure issues they identify are addressed in reports, provided they are material planning matters.

1.3 Members should consider in any circumstances whether the provisions of the Member Code of Conduct apply.

1.4 Members of the Planning Committee and Officers involved in the planning system should not favour any individuals, groups, firms or localities. Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on the Planning Committee.

1.5 Although they may be influenced by the opinion of others, Members alone have the responsibility to decide what view to take in the interests of the whole District having heard all the available information and evidence at Committee.

1.6 All Members and Officers involved with the Planning Committee should take part in the training offered by the Council.

2.0 MEMBERS

Gifts and Hospitality:

2.1 The Code of Conduct for Members requires that the receipt of gifts and hospitality of a value exceeding £25 should be recorded with the Monitoring Officer.

2.2 Notwithstanding the financial limit in the Code of Conduct, all gifts which are received by Members in respect of matters relating to planning or by Members of the Planning Committee should be recorded. Offers of gifts to Members should also be recorded.

- 2.3 Even if receipt is unavoidable, or even a token, it should also be recorded.

Declaration and Registration of Interests:

- 2.4 Whilst it is the responsibility of Members to notify any changes to their registerable interests as they occur, all Members will be reminded about this at 12 monthly intervals.
- 2.5 Any Member with interests which would prevent them voting on a regular basis should not serve on the Planning Committee.
- 2.6 The Code of Conduct covers declarable interests and when, for non-prejudicial interests, a Member may still speak and vote. Exemptions for non-prejudicial interests are provided for personal interests which arise from:-
- membership of a public body
 - appointment by the Council as a representative on an outside public body
- 2.7 Members should consider in particular whether they have a declarable interest for application sites which are close to their own property.
- 2.8 Members should inform the Committee of any significant contact with interested parties to a development where this does not constitute a declarable interest and is significantly different from the general contact which other Members of the Committee may have had.
- 2.9 A Member should not seek to influence a delegated decision on an application which if it had come before the Planning Committee would have required the Member to declare an interest and/or refrain from taking part in deliberation of the application.

Development by Councillors:

- 2.10 Councillors submitting their own applications, or affected by an application, should take no part in its processing.
- 2.11 A Councillor should identify their own applications and those of their relatives at the point of receipt by the Council, including when this is through an agent, and the Monitoring Officer be informed.
- 2.12 All such proposals should be determined by reference to the Planning Committee.
- 2.13 When a Member application is under consideration they will be dealt with and regarded as no different to any other applicant.
- 2.14 Councillors should not act as agents for people pursuing planning matters.

Development by the Council:

- 2.15 Developments by the Council will be treated in the same way as private developments and in accordance with the Town and County Planning General Regulations 1992 and DETR Circular 19/92.

- 2.16 The Leader of the Cabinet and lead officers for Council developments shall withdraw from the Planning Committee during consideration of such items.

Lobbying:

- 2.17 Where Members of the Committee may be lobbied in their representational role – and whether judgements are formed in the passage of an application through the system – they should not express opinion on the development which indicates they have made up their mind until all the available arguments and evidence are available at Committee. Advice to the public should be restricted to procedural matters, including making the relevant Officer aware so that material opinions can be reflected in the report.
- 2.18 Members will be able to speak on behalf of a body of opinion, but the Committee should be made aware as to such opinion as distinct from personal views.
- 2.19 There should be no party political grouping on how to vote on applications prior to a Planning Committee Meeting, use of political whips, or similar voting because an application is moved by a Member of the same party.
- 2.20 Members should not lobby or trade with other Committee Members for a particular outcome.
- 2.21 Whilst a Member can speak on behalf of a body of opinion, they should not personally be involved in organising support for or against that opinion.
- 2.22 Members not serving on the Planning Committee may speak to the Committee in accordance with Standing Orders, but should not be deferred to by the Committee. The Chairman will decide when non Committee Members may speak.
- 2.23 A Parish or Town Council has the right to be consulted, but should not automatically be deferred to in coming to a decision. Rather their views, insofar as they are material planning considerations, should be taken account of with other available information and evidence.
- 2.24 Members should not pre-judge issues and keep an open mind on applications.
- 2.25 If a Member feels the need to go public in support of a particular outcome on an application or campaign actively for that outcome, the proper course of action for such a Member would be to make an open declaration and not vote.
- 2.26 Planning Committee Members should not organise support for or against a planning application.
- 2.27 Members should not put pressure on Officers for a particular outcome or do anything to compromise Officer impartiality.

Pre-Application Discussions:

- 2.28 Councillors talk regularly to constituents to gauge their views on matters of local concern. These informal contacts do not need to be recorded or notified to anyone.
- 2.29 However, more formal meetings with significant contact with developers and/or objectors need to be treated differently. Where a matter is contentious Officers should arrange, be present at and record the content of meetings. The record should be kept on the file.
- 2.30 Members should keep a written note of any telephone calls and keep relevant e-mails and letters.
- 2.31 Members should be clear that advice will be impartial and should make it clear at the outset that discussions will not bind the Council to make a particular decision.

Call-in Procedures:

- 2.32 Call-in procedures whereby Members can request that a proposal be determined by the Committee will require the request and reason for it to be put in writing to ensure that reasons relate to a material planning concern.

Reports to Committee:

- 2.33 Reports to Committee will contain details of:-
- The proposal and site
 - Any relevant planning history
 - An exposition of the Development Plan and other material considerations
 - Details of objections and views from consultation
 - The Planning Officer's observations and advice
 - A recommendation to grant, refuse or defer with reasons
- 2.34 Where it is not possible to offer a recommendation in a written report because all the information is not available, a recommendation will be made and recorded at the Committee.
- 2.35 Members should determine applications in accordance with advice given, including verbal updates to reports, unless they have good planning reasons to the contrary and in the knowledge of all the available information and evidence.
- 2.36 Minutes will relate to the planning reasons for the decision specifically whether:-
- It is in accordance with Development Plan policies, or
 - Other material considerations indicate otherwise (and what they are)
- 2.37 If the Committee is minded to make a decision contrary to the recommendation, the relevant Officer should be given the opportunity to outline the implications for the Committee of such a decision.

- 2.38 If the Committee wish to add or amend conditions, an Officer should be invited to draft such a condition.

Site Visits:

- 2.39 Selection of sites for visits prior to decision will follow the criteria in Annex 1.
- 2.40 Site visits will follow the procedures in Annex 2. Any point of explanation or clarification will be by reference to the accompanying Officers only.
- 2.41 If a private site visit is requested or if an individual Member makes a private site visit to assist their understanding of the application, they should avoid contact with the applicants/objectors over and above that required to acknowledge their presence, not trespass and give no opinions on the merit of the application or receive information which is not available to the Planning Officer. When a private visit has been requested it should only be undertaken if the person making the request is informed of these procedures and agrees to abide by them.

Review:

- 2.42 Annually, the Committee will visit a sample of implemented permissions to assess the quality of those decisions.

Planning Agreements:

- 2.43 Where a planning agreement (Section 106 Agreement) is to be part of a planning application, the details will be included in the report to Committee.

Other Matters:

- 2.44 Other requirements relating to Members generally can be found in the Member Code of Conduct and the Protocol on Member/Officer Relations.

3.0 OFFICERS:

Gifts and Hospitality:

- 3.1 The Code of Conduct for Officers requires that gifts and hospitality received by Officers should be notified to the Chief Executive.

Development by Employees:

- 3.2 Employees submitting their own applications, or affected by an application, should take no part in its processing.
- 3.3 An Employee should identify their own applications and those of their relatives at the point of receipt by the Council, including when this is through an agent, and the Monitoring Officer be informed.
- 3.4 All such proposals should be determined by reference to the Planning Committee.
- 3.5 When an Employee application is under consideration they will be dealt with and regarded as no different to any other applicant.

Discussions Pre-application and During Passage Through the Planning System:

- 3.6 In any discussions it should be made clear that they will not bind the Council to a particular decision. It is acceptable for an Officer to express an opinion on the application prior to Committee, but this must not be stated in a manner which implies this is a decision of the Council.
- 3.7 Through office practice a file note **should be** made of all contacts and meetings relating to an application. In contentious cases a follow-up letter will confirm the contact and outcome.
- 3.8 Officers' advice will not be partial **and will be based upon the development plan and material planning considerations.**

Other Matters:

- 3.9 Other requirements relating to Officers generally can be found in the Officers' Code of Conduct and the Protocol on Member/Officer Relations.

SITE VISIT CRITERIA:

1. The application under consideration raises specific issues in relation to matters such as scale, design, location, access or setting which can only be fully understood from the site itself.
2. The application raises an important point of planning principle which has wider implications beyond the site itself and as a result would lead to the establishment of an approach which would be applied to other applications.
3. The application involves judgements about the applicability of approved or developing policies of the Council, particularly where those policies could be balanced against other material planning considerations which may have a greater weight.
4. The application has attracted significant public interest and a visit would provide an opportunity for the Committee to demonstrate that the application has received a full and comprehensive evaluation prior to its determination.
5. There should be a majority of Members insufficiently familiar with the site to enable a decision to be made at the meeting.
6. Site visits will usually be selected following a report to the Planning Committee. Additional visits may be included prior to the consideration of a Committee report when a Member or Officer considers that criteria Nos: 1-4 above apply and an early visit would be in the interests of the efficiency of the Development Management Service. Such additional site visits will be agreed for inclusion in consultation with the Chairman or Vice-Chairman of the Planning Committee.

PROCEDURE FOR PLANNING COMMITTEE SITE VISITS

The purpose of site visits:

The purpose of a site visit is set out in the criteria in Annex 1.

It is not an opportunity for the applicant or others to address the Committee or make representations which would not have been permitted at a meeting of Planning Committee, nor is it appropriate for Members to discuss the merits of the application.

The only persons who should be present at a site visit are:-

- Members of the Planning Committee
- Interested Ward Members who wish to see the site
- A representative of the relevant Town or Parish Council
- Appropriate Officers of the Council and other relevant authorities, and
- The applicant and/or his agent

Procedure at site visits:

1. On arrival, the Chairman will call the Members of the Committee present to order.
2. The Chairman will ask the Planning Officer to outline the proposal to Members, drawing their attention to the relevant points regarding objections/observations received.
3. The Chairman will then ask any other officer present to address the Members.
4. Members will then be invited to ask any questions or seek clarification of facts from the Officers present. Members should not direct these questions to the applicant or others present. Any matters not to hand will be reported at the Committee meeting. Discussion on the merits of the application will not be permitted.
5. The applicant and others present (including Ward Members) will not be allowed to speak, unless he or she is specifically asked by an Officer or the Chairman to point out particular factual matters on site, or is invited to draw the Members' attention to particular factual matters relevant to the site of the planning application.
6. The Chairman will close the site visit and Members will promptly leave the site.
7. Whilst conducting site visits Members will have due regard to the health and safety of themselves and others and will follow appropriate safety instructions on site, including any guidance on parking and access. Appropriate safety wear will be worn.