

Meeting:	Standards Committee/Development Control Committee
Date:	6 th December (Standards) 7 th December (Development Control)
Subject:	Planning Protocol
Responsible Officer:	John Robinson
Contact Officer:	John Robinson
Portfolio Holder:	Councillor Keith Burchell
Key Decision:	No
Status:	Part I

Section 1: Summary

Decision Required

- (i) That the Planning Protocol should be revised to make clear its status and enforceability.
- (ii) That the Protocol should form guidance re-enforced by key principles.
- (iii) That all Members should be required to have regard to the Protocol and be guided by the principles when making a judgment.
- (iv) That breaches of the Protocol should be referred to a Panel of the Standards Committee.
- (v) That procedure for such a Panel should also set out their powers.

- (vi) That political groups should be asked to re-enforce the Protocol by imposing group rules on its enforcement.
- (vii) That a group working party of DC and Standards Committee Members be formed to consider the re-drafting of the Protocol.
- (viii) That the terms of reference of the working party include a provision for an evaluation to take place of planning protocols of other local authorities.
- (ix) That the Revised Protocol shall be guided by and include recognised good practice for members with regard to planning protocols.

Reason for report

To clarify the status of the Protocol and to enable Members to review the content of the Protocol.

Benefits

To provide improved guidance for Members.

Cost of Proposals

None associated with this report.

Risks

Increases the risk of Members not complying with the Protocol. Less public confidence in the planning process.

Section 2: Report

2.1 Brief History

Members of the Standards Committee have already received a report on the status of the Planning Protocol following a meeting of a Hearing Panel earlier in the year. Members of Development Control Committee have received a separate letter. These documents explained that a breach of the Protocol does not necessarily amount to a breach of the Code of Conduct. The status of the Protocol and its feasibility has, as a result, been left unclear.

2.1.1 This report has two main objectives

- (a) to seek to clarify the status of the Protocol by determining what is guidance and what are rules and how they are to be enforced.
- (b) to enable members to review the general content of the Protocol.

2.1.2 The Protocol is a statement of the standards of behaviour that the Council expects its Members to achieve when considering planning applications.

2.1.3 This task requires Members to behave in a way that raises the confidence of the public in the planning process and protects the Authority from external challenge. The matters to be determined can have a considerable effect on the quality of life of the residents of the Borough, have an economic impact on the prosperity of the Borough, and have huge implications for the success of local businesses.

2.2 **Options Considered**

2.2.1 **The Protocol should be regarded as Guidance**

The guidance should be persuasive and Members would be expected to follow it carefully. A failure to comply with guidance is not treated as a breach of a rule or of the Members' Code of Conduct. A Councillor may decide not to comply, but would be expected to have regard to the Protocol at all times and should only depart from its provisions for good reasons.

2.2.2 Not all guidance is likely to be of the same importance. Breaches of some guidance could lead the Council into expensive legal challenge. Other parts of the guidance represent good practice and are designed to enhance public confidence but the consequences of breach may be much less.

2.2.3 Merely because the Protocol is regarded as guidance does not mean that nothing need happen if a breach occurred. This is very much a matter for Members to determine but a procedure could be adopted that any Member could refer an alleged breach to a Panel of the Standards Committee. The power of the Panel would be limited to criticism and/or referral to the Leader of the relevant group but this may nevertheless be regarded as suitable and effective means of resolution.

2.2.4 To re-enforce the guidance it is suggested that a few principles should be agreed that govern the entire Protocol, eg, a statement that members should at all times behave in a manner likely to enhance public confidence, not to act in a way that puts the Authority at risk of legal challenge and consider all applications in a proper manner taking into consideration only those matters permitted by law.

2.2.5 Clearly if a number of Councillors regularly decided to depart from the Protocol, it would devalue the status of the Protocol and could render the document largely worthless. If this ever began to happen an urgent review would be necessary. Criticism of the Authority and possible loss of public confidence in the planning process could otherwise arise.

2.2.6 A Protocol based on guidance, if it is to work properly, will need the active support of all political groups.

2.2.7 **“Local” Rule**

This is called a “local” rule to distinguish it from the third option below.

The rule(s) would not be incorporated into the Code of Conduct for Members and a breach of the rule would not therefore trigger the legislative enforcement regime that breaches of the Code follow.

2.2.8 An allegation that a Member has breached a local rule could be made to the Standards Committee (or a panel of the Committee). The Committee or Panel could have the following powers.

- (a) to publicise a criticism of a Councillor who has failed to comply with a “local” rule.
- (b) to bring the matter to the notice of the appropriate group leader.
- (b) to request a leader of a group to remove a Councillor from the membership of the Development Control Committee.

2.2.9 There is little difference between the enforcement of ‘local’ rules and guidance. It may be thought that by having part of the Protocol as rules and part as guidance merely devalues the guidance.

2.2.10 The use of the term ‘rule’ also encourages a narrow definition of the requirements of the Protocol i.e. its provisions are strictly interpreted.

2.2.11 **Breach of the Code of Conduct**

If parts of the Protocol are considered to be of such importance that higher penalties should be available then they could be incorporated into the Code of Conduct. Enforceability would then be possible through the statutory procedure in the same way as other breaches of the Code.

2.2.12 The approval of the Standards Board would need to be obtained.

2.2.13 The process of investigation is time consuming, costly, and can be traumatic on the person involved.

2.2.14 **All or some of 1 to 3 above**

It is possible to adopt a Protocol that, for example, is mostly guidance, has some 'local rules' and possibly a few paragraphs to be incorporated into the Code of Conduct.

2.2.15 **Other Possibilities**

If a decision is made to adopt a Protocol that provides guidance only, it may still be possible to report a Member to the Standards Board for a breach of the Code. There are some general provisions of the Code eg –

'A Member must not conduct himself/herself in a manner which could be regarded as bringing his/her office or authority into disrepute'.

Persistent failure to adhere to the guidance could therefore be regarded a breach of the Code, which may result in the member being reported to the Standards Board.

In addition, members acting contrary to the guidance and general good practice may put the Council at risk of a complaint of maladministration to the Local Government Ombudsman.

2.2.16 **Consideration**

There may not be in practice much difference between option 1 and 2. Local rules would entail a new procedure to be developed for 'hearings' at panel meetings. The time involved and cost of such a process should be assessed against the benefits that a system of rules provide over a guidance regime. It may be that some form of hearing may also be appropriate even if the guidance option is chosen.

2.2.17 Key principles should underlie the entire Protocol. These principles should have to be taken into account whenever the remaining provisions of the Protocol have to be considered by either Members involved in the planning process, or Members of the Standards Committee when considering any referrals.

2.2.18 To achieve the aims of the Protocol will require more than a slavish adherence to rules – it requires judgment. This may be considered more likely if Members are asked to carefully bear in mind the few key principles underlying the Protocol when they consider how to apply the Protocol.

2.2.19 It is not immediately apparent what provisions of the Protocol should be made subject to the statutory enforcement procedure, nor is it thought likely that the Standards Board would agree to the imposition of restrictions on Members that go well beyond the existing Code. As already noted in paragraph 2.16 persistent or very serious breaches are already within the code if the Council is thereby brought into disrepute.

2.3 Consideration of the detail of the Protocol

2.3.1 Paragraph 6.2 – Proposals submitted by Councillors or officers. The first three paragraphs of 6.2 of the Protocol are generally accepted as good advice. The next paragraph reads as follows

“it is suggested that: (i) where a planning application includes land owned by a member of the Council in a member’s political party, they clearly have a personal interest in the matter. They should also consider themselves to have a prejudicial interest and not participate in the discussion or application.”

2.3.2 This is an issue primarily for Members of the Standards Committee to consider but there is considerable difficulty in interpreting the Code of Conduct to achieve the conclusion that a personal interest “clearly” arises. It may be that on the circumstances of a particular case that such an interest does arise but this is not necessarily so.

2.3.3 The Code of Conduct states that a personal interest may be prejudicial and thus require the Member to take no part in considering a matter BUT if no personal interest arises then no prejudicial interest can arise.

2.3.4 The requirement can also be criticised on the basis that friendships and for that matter enmities do not necessarily follow group membership. This would suggest that rather than have a blanket rule, Members should consider the guidance, and in particular, consider any key principles relating to public perception and faith in the process, and make their own judgment.

2.3.5 What has to be weighed up in the need for the planning process to not only be ‘above board’ but to be perceived so to be in the eyes of the public. The considering of applications from fellow- councillors will always be difficult and if groups were to adopt a convention to re-enforce guidance in the Protocol that fellow group members will leave the room, public perception is likely to be enhanced. Against this need though, is the need not to lightly remove from elected councillors their ability to carry out the tasks for which they were elected.

2.3.6 Any councillor attending a planning meeting, but not as a member of the Committee, should also consider whether a declarable interest under the Code arises and if so whether that interest is prejudicial. If not prejudicial, then that member must also go on to consider the Protocol.

2.3.7 **Other possible changes to the Protocol**

A few years ago a report was commission on the planning process in Harrow. Its recommendations were reported to the group leaders. This report also made some proposals to the Planning Protocol.

For example:

- (a) The protocol is amended to include explicit references to the overriding duty of members to the whole local community and to act in the public interest, not to act or cause the authority to act unlawfully or so as to lead to maladministration.
- (b) The protocol is amended at 1.2 to make clear it applies to all members and at all times and not just when they are making decisions in a formal committee or Council setting.
- (c) The protocol is amended to make clear that ward members who are not members of the DC Committee cannot participate in debates.

2.3.8 Following discussions with planning and legal officers a number of possible improvements to the Protocol have been identified.

Para 2.1 As presently drafted it is not clear what are meant to be rules and thus it is not clear what is in the remit of the Standards Committee.

Para 2.6 First paragraph. This should refer to prejudicial interests only. Members with a personal interest, providing it is declared, can remain to speak.

Para 2.7 This should refer to the Council having an interest.

Para 4.1 This states that Members of the Development Control Committee should not actively campaign either for or against planning applications. More guidance as to what is meant by campaigning might be helpful. It would also be more accurate to reverse the sentence to say that if Members took part in campaigning then they should not participate at the Development Control Committee.

2.3.9 A note of the relationship between the work of a Licensing Panel and Development Control Committee also needs to be added.

2.3.10 Recommendations

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- (vi) That political groups should be asked to re-enforce the Protocol by imposing group rules on its enforcement.
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2.4 Financial Implications

None

2.5 Legal Implications

Only as may be included in this report.

2.6 Equalities Impact

None

2.7 Section 17 Crime and Disorder Act 1998 Considerations

None

Section 3: Supporting Information/Background Documents

Appendix 1: Protocol for Members and Reserve Members when dealing with Planning Applications and Lobbying.

Background Documents

Protocol for Members and Reserves dealing with Planning Applications and Lobbying.

Report to Standards Committee - 21 September 2005.

Letter to Members of Development Control Committee - 4 November 2005