

CONSTITUTION WORKING GROUP AGENDA



Friday 13 March 2009

at 2.00 pm

in Committee Room 'A'

MEMBERS: CONSTITUTION WORKING GROUP:

The Mayor, Stuart Drummond

Councillors R Cook, Fenwick, Flintoff, James, Laffey, A Marshall, Morris, Preece, Richardson and Simmons

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

3.1 To confirm the minutes of the meeting held on 15 January 2009.

4. ITEMS FOR CONSIDERATION

4.1 Business Report – *Democratic Services Team Manager*

4.2 Constitutional Amendments Required to Implement the Councillor Call for Action Mechanism Derived from the Local Government and Public Involvement in Health Act 2007 – *Chair of Scrutiny Co-ordinating Committee*

4.3 The Local Democracy, Economic Development and Construction Bill – *Chief Solicitor*

4.4 Planning Code of Conduct – *Chief Solicitor*

5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

CONSTITUTION WORKING GROUP

15 January 2009

The meeting commenced at 4.30 pm in the Civic Centre, Hartlepool

Present:

Councillor: Carl Richardson (In the Chair)

Councillors: Rob Cook, Bob Flintoff, Marjorie James, Pauline Laffey, Ann Marshall, George Morris, Arthur Preece and Chris Simmons.

Officers: Peter Devlin, Chief Solicitor
Amanda Whitaker, Democratic Services Team Leader
Angela Hunter, Principal Democratic Services Officer

33. APOLOGIES FOR ABSENCE

Apologies for absence were received from The Mayor, Stuart Drummond and Councillor Sandra Fenwick.

34. DECLARATIONS OF INTEREST

None.

35. MINUTES OF THE MEETING HELD ON 3 NOVEMBER 2008

Confirmed.

36. MATTERS ARISING FROM THE MINUTES

A Member questioned whether an update on minute 31 - clarification of access to information rules and distribution of confidential papers, had been prepared. The Chief Solicitor confirmed that a "Briefing Note" for Officers had been prepared and would be circulated to Corporate Management Team (CMT) upon receipt of approval from the Chair and Vice Chair of the Working Group. The Chair indicated his approval for the note to be circulated to CMT and a "Guidance Note" for Members would follow shortly thereafter.

In response to Members' concerns, the Chief Solicitor indicated that a Code of Conduct for officers was still awaiting introduction through the DCLG.

However, it had been noted that the conduct of officers was already governed within either a professional code of practice, ie solicitors, teachers, or through the standard terms and conditions of employment. This should be conveyed to all employees upon commencement of duties, as part of the Council's induction programme.

37. QUESTIONS ON NOTICE AT FULL COUNCIL – RULE 11.2 (ii)

The Chief Solicitor presented a report which outlined the Council Procedure Rule with regard to questions to the Cleveland Fire Authority (CFA). Members were concerned that questions to the CFA were limited to the minutes attached to the Council agenda and which they considered a major restriction. It was acknowledged that although Council representatives on the CPA and CFA should not be expected to answer questions on operational matters, questions on the overall effectiveness of the service were deemed to be viable questions. Members considered that there should be a uniformed approach for questions to both the CPA and CFA.

A discussion ensued on the timescales for the submission of questions to a Council meeting and Members were in agreement that the current timescales were appropriate and should not be altered.

Members suggested that the Chief Solicitor approach the CFA to ascertain their views on the submission of questions to the Council's representatives on the CFA.

Recommendation

That the Chief Solicitor approach the CFA to obtain their views on varying the restriction on the submission of questions to the Council's representatives on the CFA as part of the Council agenda.

38. EXECUTIVE ARRANGEMENTS

The Chief Solicitor presented a report which provided general information upon the changes that could be adopted to the governance arrangements by local authorities under the provisions of the Local Government and Public Involvement in Health Act, 2007. The proposals associated with such a change should also incorporate a timetable and where relevant, transitional arrangements to implement the proposed changes. If a local authority proceeds by way of a referendum (which appears to be mandatory where an authority has previously conducted a referendum), the result of that referendum would then be binding upon the local authority. With the exception of those authorities who were presently operating alternative arrangements and where arrangements relate to the model of a Mayor and Council Manager wherein changes were required in 2009, the majority of authorities would operate their confirmed new governance arrangements to have application to the elections following the defined "permitted resolution

periods". As detailed in the report it was noted that Hartlepool Council's likely permitted resolution period would therefore end on 31 December 2014 should a referendum be undertaken in the period prior (ie after 18 October 2011), which favoured a change to the executive arrangements. For the avoidance of doubt, the permitted resolution period, would recur in every fourth year from the initial "timetable" as indicated within the report.

39. BUSINESS REPORT

A) HARTLEPOOL WAR MEMORIAL AND CROSBY HOMES

During a review of Council appointments to outside bodies in 2001, the above organisation was removed from the approved list. It was noted that the organisation had continued to invite the Chairman of the Council as an ex-officio trustee. Members were asked to consider re-instating this organisation onto the list of outside bodies to which Council representatives are appointed.

Members were supportive of the inclusion of this organisation into the list but sought clarification on the voting rights of ex-officio trustees.

Recommendation

That the Democratic Services Team Leader seek clarification from the Hartlepool War Memorial and Crosby Homes on the voting rights of ex-officio trustees and report back to the next meeting of the Constitution Working Group.

Councillor Simmons declared a non-prejudicial interest in the next item.

B) CIVIC HONOURS COMMITTEE

The Chair has requested that the Working Group give consideration to the composition and voting of the Civic Honours Committee as agreed at Council on 26 October 2006. It was noted that the original composition as agreed did not include the Chairman of the Council and Members felt that the Chairman should be included on the membership.

The number of political groups included on the composition was also questioned by Members. In response to Members questions, the Chief Solicitor advised that any two individuals could form a political group and as such, the Administrative Group were a recognised political group.

The following composition was suggested:

The Mayor
The Chairman of the Council
1 representative from the 3 main political groups
1 independent Member
1 resident representative (non-voting)
1 community empowerment representative (non-voting)

In addition, it was suggested that a voting majority of 4 be established.

A discussion ensued on the possibility of including a Freeman of the Borough on the Committee and it was agreed that this was not feasible at the current time.

The timetable for advertising the invitation to submit nominations and the process that follows was discussed and the following was agreed:

- 1) Advertise in Hartbeat magazine in the March and June editions.
- 2) Closing date to be 4 weeks after the 2nd advertisement.
- 3) Civic Honours Committee to meet to discuss nominations.
- 4) Individuals be consulted on whether they accept their nomination.
- 5) Accepted nominations to be submitted to next Ordinary Council meeting for approval.
- 6) Special Council to be convened to install honours on date agreed by the Chairman.

Recommendation

- 1) That the composition of the Civic Honours Committee be agreed detailed above.
- 2) That a voting majority of 4 be established.
- 3) That the timetable as detailed above be agreed and processed by the Democratic Services Team Leader.

40. ANY OTHER BUSINESS

A Member requested that further discussion be undertaken at the next meeting of the Working Group in relation to political groups and the recommendations provided through the Comprehensive Performance Assessment, in light of a discussion that Member had with a representative from the Electoral Commission.

41. ANY OTHER BUSINESS

A Member raised concerns that the Council's standard had not been flown as a mark of respect at the recent sad death of ex-Mayor of the Town. It was noted that this was a difficult issue as it was at the families' discretion whether there were any ceremonial duties, including a civic funeral, undertaken. It was suggested that this issue should be documented in some form to avoid any confusion in the future, although the sensitivities around this issue were acknowledged.

42. ANY OTHER BUSINESS

It was noted that the Mayoral election had been scheduled for June this year. The Constitution only provided for the Annual General Meeting of the Council to take place in March, April or May depending on when local elections were held. However, Members were asked to give consideration to holding the Annual General Meeting in June, post this year's Mayoral election. Members noted that the AGM was usually held within 21 days of an election and suggested that this should also apply in this case.

Recommendation

That the Annual General Meeting of the Council 2009 be convened within 21 days of the Mayoral Election to be held on 4 June 2009.

The meeting concluded at 5.55 pm.

CHAIRMAN

Report of: Democratic Services Team Manager

Subject: BUSINESS REPORT

1. CIVIC HONOURS COMMITTEE

1.1 Members may recall that at the meeting of the Constitution Committee held on 23 January 2009, the composition of the Civic Honours Committee was discussed. It was agreed that the Civic Honours Committee be appointed on an annual basis in line with other Council Committees with an increased membership of 7 (politically balanced) plus the Mayor, the Chairman, 1 resident representative and 1 community empowerment representative, the latter two being non-voting members of the Committee.

1.2 In line with current proportionality, nominations were sought at the last meeting of the Council. Following the meeting, the composition of the Committee is as follows:

The Mayor

The Chairman

Councillors Martyn Aiken, Stephen Akers-Belcher, Jonathan Brash, Cath Hill, Majorie James, George Morris, Arthur Preece.

1.3 The following additional nominations for the resident representative and community empowerment representatives have recently been received:

Christine Blakey and Ron Foreman

1.4 In accordance with the instructions of Members, arrangements have been made for an article to be included in two editions of Hartbeat. In the meantime, a number of applications have been received for consideration by the Committee. I should be grateful to receive the views of the Working Group in relation to convening the first meeting of the Civic Honours Committee.

RECOMMENDATION

1.5 Members' views are sought on convening the first meeting of the Civic Honours Committee.

2. MEMBERS QUESTIONS AT COUNCIL

2.1 The Council's Constitution, Part 4 – Council Procedure Rules, Section 11 provides for the submission of questions by Members to a Council meeting.

The Chairman has suggested that the Working Group may wish to discuss the length of the questions submitted.

RECOMMENDATION

- 2.2 Members' views are sought.

3. HARTLEPOOL'S WAR MEMORIAL AND CROSBY HOMES

- 3.1 During a review of Council appointments to outside bodies in 2001, the above organisation was removed from the approved list. It was noted that the organisation had continued to invite the Chairman of the Council as an ex-officio trustee. Members were asked to consider re-instating this organisation onto the list of outside bodies to which Council representatives are appointed. Members were supportive of the inclusion of this organisation into the list but sought clarification on the voting rights of ex-officio trustees.
- 3.2 Confirmation has been received from the Hartlepool's War Memorial and Crosby Homes that the Chairman as an Ex-officio trustee has the same voting rights as all trustees.

RECOMMENDATION

- 3.3 That consideration be given to the inclusion of the Hartlepool's War Memorial and Crosby Homes Organisation on the annual list of outside bodies to which the Council appoint.

4. TEESSIDE VALUATION TRIBUNAL

- 4.1 Members may recall that at the meeting of Council on 11 December 2008 following concerns expressed by Members it was requested that a meeting be arranged involving Members and appropriate Officers to discuss appointments to the Tribunal. The Chairman suggested that a report be submitted to Constitution Working Group to discuss this issue further.
- 4.2 The following appointments to the Teesside Valuation Tribunal had been confirmed at the Council meeting on 30 October 2008 with a term of office until 31 March 2011:

Councillors Coward, A Lilley and G Lilley and Mr Jeffries.

- 4.3 In addition to these appointments, an additional five 'non-councillor' appointments were required, as detailed in a letter from the Valuation Tribunal Service attached as **Appendix 1**. In summary, 6 non-councillor names are required to ensure 3 councillors from Hartlepool continue to be included. This is due to the regulations only allowing the tribunal members from Hartlepool to comprise of no more than a third councillors. The

composition already includes one non-councillor from Hartlepool, Mr E Jeffries, therefore another 5 names are required.

- 4.4 In view of the impending legislation changes, it was suggested that as an interim measure, the fully trained existing members from the Tyne and Wear, Durham and North Yorkshire tribunals could be utilised to cover any temporary shortages which could arise in Teesside after 31 March 2009. The Valuation Tribunal Service suggested five existing non-councillors of the Tribunal for the Council to appoint.

Mr J Woolley, Mr R G Bennett, Mr G E Miller, Mr A R Wilkinson JP and Mr J O'Shea.

- 4.5 The first four people are all current presidents of the Cumbria, Durham, Northumberland and Tyne & Wear Valuation Tribunals. The fifth name (Mr O'Shea) is one of only 7 VTS national Board members who run the service.

RECOMMENDATION

- 4.6 Members' views are sought.



Angela Hunter
Principal Democratic Services Officer
Hartlepool Borough Council
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TS24 8AY

David P Mulgrew IRRV

Clerk of the Tribunals

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Telephone : 0191 384 8020

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Email: vtdurham@vto.gsx.gov.uk

Our Ref :

Your Ref :

Date : Friday, 13 June 2008

Dear Angela

Teesside Valuation Tribunal

Thank you for your letter received on 6 June 2008 and my apologies for not providing a written response to your earlier email.

Current Membership

The Teesside Valuation Tribunal has 15 members from four appointing authorities, which includes Hartlepool.

Out of those 15, the following are from Hartlepool:

Name	Address	Tel No	Councillor/ Non Councillor
Mr. W. J. Coward	16 Coniscliffe Road, Hartlepool TS26 0BS	(H) 01429 273643	Councillor
Mr. E. Jeffries	28 Lowthian Road, Hartlepool. TS26 8AN	(H) 01429 867122	Non Councillor
Ms. A. Lilley	68 Fens Crescent, Hartlepool, TS25 2QN	(H) 01429 291542	Councillor
Mr. G. Lilley	68 Fens Crescent, Hartlepool, TS25 2QN	(H) 01429 291542	Councillor
Mr. B. Smith	12 Chepstow Walk, Hartlepool. TS26 0TF	(H) 01429 263588	Non Councillor

The Teesside Valuation Tribunal will lose five of its 15 members by October 2009 when they reach the statutory age limit of 72 years. Two of those members are from Redcar, two are from Middlesbrough and Mr B Smith of Hartlepool has replied to a general survey of tribunal

members indicating he does not wish to continue in office beyond 31 March 2009. This will leave 10 members in post and under normal circumstances we would be looking for replacements across Teesside.

However, imminent changes are on the horizon after the Local Government and Public Involvement in Health Act 2007 paved the way for the creation of a single Valuation Tribunal for England (VTE), which will replace the 56 English valuation tribunals. At the time of writing, work is ongoing to appoint a National President to take responsibility for the VTE. It is anticipated that the VTE will formally replace the 56 English valuation tribunals in the autumn of 2009.

A consequence of the VTE is likely to be less tribunal members needed nationally as members will have no geographical boundaries to their jurisdiction. The benefits will be an improved standard of tribunal member, more consistency and more efficient use of public money.

Member re-appointments

The current term of office for all of the members from the Hartlepool area ends on 31 March 2009. However, VTE may not come into operation until the autumn of 2009. Although the legislation is now in force to create a VTE there is nothing in place which automatically transfers Teesside members in office at 31 March 2009 to the VTE.

Therefore, there is likely to be a gap of up to one year and it is therefore necessary to re-appoint the existing members to a term ending no sooner than 31 March 2010, preferably 31 March 2011 to allow for any unforeseen delays in the creation of a VTE.

Until the VTE starts up, legislation requires the appointment of tribunal members to be determined jointly by the President of the Teesside Valuation Tribunal (Mr I Irvine) and the appointing authority (Hartlepool Borough Council).

Mr Irvine has asked me to seek re-appointment of Mr Jeffries, Mr Coward, Ms Lilley and Mr Lilley for a minimum term taking them up to 31 March 2010, preferably 31 March 2011.

Appointment rules

There are regulations which limit the percentage of councillor tribunal members. Essentially, regulations provide that an appointment to fill any vacancy in the membership of a tribunal will not be valid if its effect would make the aggregate number of tribunal members who are councillors exceed one third of the total number of tribunal members the local authority concerned is entitled to participate in appointing.

Excluding Mr Smith for the reasons stated above, you will note that three out of the four tribunal members from Hartlepool are councillors. In view of the falling numbers of tribunal members the Teesside Valuation Tribunal would need five new 'non-councillor' members to retain the existing councillor members.

Mr Irvine would like to retain all of the existing tribunal members from Hartlepool, as they regularly undertake refresher training and actively participate at hearings. Please remember that the office of a tribunal member is non-political; tribunal members act impartially and, like courts, make decisions based on the evidence presented to them.

Issues needing a decision by Hartlepool Borough Council

Mr Irvine does not wish to appoint any new members because by the time they are fully trained they may no longer be required. However, as an interim measure, it is more sensible to use some of our fully trained existing members from the Tyne & Wear, Durham and North Yorkshire tribunals to cover any temporary shortages which could arise in Teesside after 31 March 2009.

Please can you confirm that this would be acceptable to your authority?

If this is acceptable then we can discuss the details of the five individual members.

I must emphasise that both Mr Irvine and I are happy to meet with any representatives of Hartlepool Borough Council to discuss the issues.

Yours sincerely



David Mulgrew
Clerk of the Teesside Valuation Tribunal

Copy to Mr I Irvine, MRICS, President of the Teesside Valuation Tribunal

Report of: Chair of Scrutiny Co-ordinating Committee

Subject: CONSTITUTIONAL AMENDMENTS REQUIRED TO IMPLEMENT THE COUNCILLOR CALL FOR ACTION MECHANISM DERIVED FROM THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007

1. PURPOSE OF REPORT

- 1.1 To seek endorsement for the necessary constitutional changes from the Constitution Working Group to enable the Authority to implement the Councillor Call for Action mechanism derived from the Local Government and Public Involvement in Health Act 2007 which comes into force on 1 April 2009.

2. BACKGROUND INFORMATION

- 2.1 For some time the Government has been pursuing the aim of giving more power to local people and local ward Councillors. This aim has run through both the 2006's 'Strong and Prosperous Communities' and the 2008's 'Communities in Control' White Papers.
- 2.2 Ward Councillors play a central role in the life of the local authority, as a conduit for discussion between the Council and its residents and as a champion for local concerns. To strengthen Councillors' ability to carry out this second role, the Government has enacted, in the Local Government and Public Involvement in Health Act 2007, at section 119, provisions for a 'Councillor Call for Action (CCfA)', providing Members with the opportunity to ask for discussions on issues where local problems have arisen and where other methods of resolution have been exhausted. This section amended the Local Government Act 2000, with the result that CCfA provisions form section 21A of that Act.
- 2.3 During the last two years, Members have been kept informed of the of the impending Councillor Call for Action mechanism through Members Seminars and progress reports to the Scrutiny Co-ordinating Committee.
- 2.4 At a meeting of the Scrutiny Co-ordinating Committee held on 31 October 2008, Members were further updated on the progress of the CCfA mechanism and pending the receipt of the long-awaited guidance, agreed that the existing selection criteria for determining the appropriateness of

undertaking a scrutiny investigation for non-mandatory referrals be amended to reflect the impending CCfA mechanism.

- 2.5 The Authority is now in receipt of the long awaited guidance and as expected it is not prescriptive and offers local authorities the opportunity to create processes and procedures on how they feel best fit based on good practice. It does, however, come into force on 1 April 2009, hence the need to actively pursue the necessary constitutional changes through this Working Group, Constitution Committee and Council thereafter.

3. PROPOSAL FOR IMPLEMENTING THE COUNCILLOR CALL FOR ACTION MECHANISM IN HARTLEPOOL

- 3.1 Councillors in Hartlepool continue to be successful in raising issues on behalf of the community through a variety of mechanisms, including through our existing Overview and Scrutiny arrangements.

- 3.2 On a practical level, the Scrutiny Co-ordinating Committee has given consideration as to how best to implement the measure to fit in with our existing policies and procedures. At present the Council's Constitution enables a variety of bodies namely the Council, Cabinet, individual Cabinet Members, Neighbourhood Forums, regulatory panels and other committees to make either mandatory and / or non-mandatory referrals to Overview and Scrutiny. Such practice also provides the opportunity for individual Members and the general public to make referrals to Overview and Scrutiny through the non-mandatory selection criteria route, although to date this has not been extensively used.

- 3.3 In response to Members observations raised during the Local Government Bill - Extended Scrutiny Powers Members Seminars held back in April 2007 together with the experiences gained from local authorities who are currently piloting such arrangements, it is proposed that the current procedure used by the above-mentioned bodies remains unchanged and that the process for making referrals of a non-mandatory nature be strengthened to reflect the Councillor Call for Action measure.

- 3.4 As such the existing selection criteria for determining the appropriateness of undertaking a scrutiny investigation triggered either by the non-mandatory / soon to be Councillor Call for Action route has be amended with the insertion of point (a) and the strengthening of point (e) as outlined below:

- (a) *Clear evidence that reasonable attempts have been made to resolve the issue with relevant partners / council departments?*
- (b) Affects a group of people living within the Hartlepool area;
- (c) Relates to a service, event or issue in which the Council has direct responsibility for, significant influence over or has the capacity to act as public champion;

- (d) Not be an issue which overview and scrutiny has considered during the last 12 months;
 - (e) Not relate to an *on-going* service complaint or *petition* (including the ability to exclude any matter which is vexatious, discriminatory or not reasonable) ;
 - (f) Not relate to matters dealt with by another Council committee, unless the issue deals with procedure and policy related issues.
- 3.5 For ease, outlined at **Appendix A** is a diagram for the proposed procedure for determining the appropriateness of undertaking a scrutiny investigation triggered either by the non-mandatory / impending Councillor Call for Action referral route.
- 3.6 Furthermore, it should be noted that the introduction of the Councillor Call for Action measure requires **the Councillor to use every available tool to resolve the issue in the first instance without involving the Scrutiny Co-ordinating Committee, therefore any additional burden should be minimal as the mechanism is designed as a last resort after all other avenues have been exhausted.** Whilst the introduction of the Councillor Call for Action measure in many local authorities will be significant, within Hartlepool its impact is more likely to be minimal as a result of existing practices.

4. RECOMMENDATIONS

- 4.1 It is recommended that the Constitution Working Group:-
- (a) endorses the revised non-mandatory referral criteria to accommodate the introduction of the Councillor Call for Action measure;
 - (b) seeks the necessary constitutional changes through the Constitution Committee and Council thereafter.

Contact Officer:- Charlotte Burnham – Scrutiny Manager
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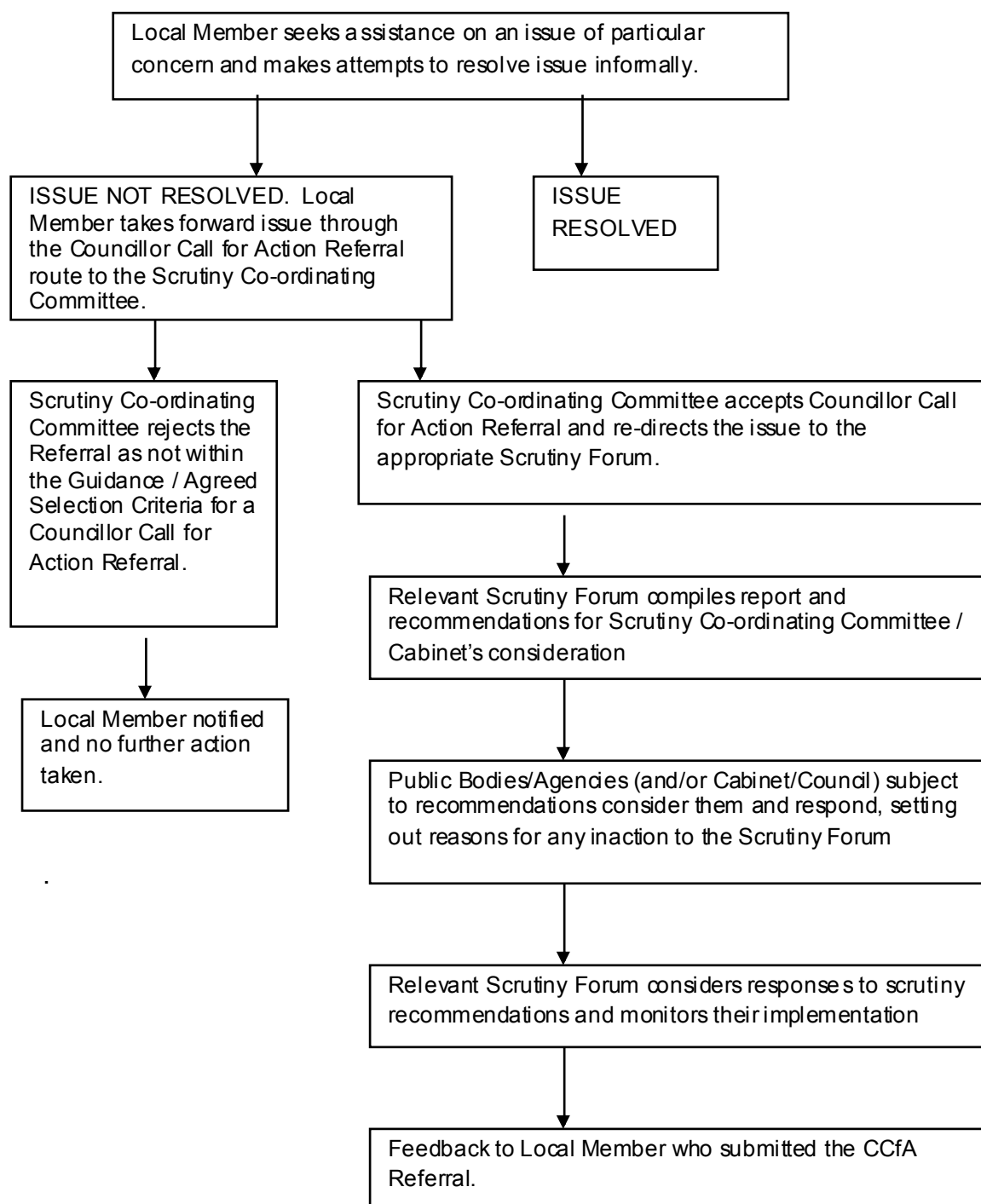
BACKGROUND PAPERS

The following background papers were used in the preparation of this report:-

- (a) Report of the Scrutiny Manager entitled 'Impending Councillor Call for Action Mechanism Update' presented to the Scrutiny Co-ordinating Committee on 31 October 2008.
- (b) Minutes of the Scrutiny Co-ordinating Committee held on 31 October 2008.
- (c) Councillor Call for Action: Best Practice Guidance

APPENDIX A

**PROPOSED PROCEDURE FOR THE CONSIDERATION OF
NON-MANDATORY/ COUNCILLOR CALL FOR ACTION REFERRALS TO
OVERVIEW AND SCRUTINY**



Report of: Chief Solicitor

Subject: THE LOCAL DEMOCRACY, ECONOMIC
DEVELOPMENT AND CONSTRUCTION BILL

1. INTRODUCTION

- 1.1 The Government White Paper “Communities in Control: Real People, Real Power” (July, 2008) has as its central theme, the aim of passing power into the hands of local communities. The Local Democracy, Economic Development and Construction Bill (distinct from the Community Empowerment, Housing and Economic Regeneration Bill) which is presently before the House of Lords seeks to give some foundation to the overall aims and objectives of the White Paper. Further, a draft Community Empowerment Bill, will also encompass other areas within the White Paper proposals, including the removal of barriers to directly elected Mayors empowering Parish Councils as well as enabling remote voting at Council meetings and the introduction of voting incentives. However, this report covers the main provisions within the Local Democracy, Economic Development and Construction Bill to appraise Members of proposals which could have constitutional significance.
- 1.2 The Local Democracy, Economic Development and Construction Bill in the main covers the following;
- Duties relating to the promotion of democracy ie provisions concerning local authority petitions and a duty to involve those affected in relevant authority functions.
 - Provisions relating to governance and audit
 - Local Government boundary and electoral change
 - Local authority economic assessments
 - Regional strategies
 - Economic Prosperity Boards and combined authorities
 - Multi-Area agreements
 - Construction contracts

2. PROMOTION OF DEMOCRACY

- 2.1 The Bill requires ‘principal local authorities’ to promote among local people an understanding of the authority’s functions, its democratic arrangements and how members of the public can take part in those arrangements. This will include a promotion as to how local people can through a better understanding of the functionality of a principal local authority become a member and thereby participate in and influence the making of decisions.

There are similar duties to promote understanding of authorities connected with a principal local authority. For the avoidance of doubt, a “principal local authority” will comprise English counties and districts, London Borough Councils and a County or County Borough Council in Wales. Accordingly, this can comprise, for example, an understanding as to how this Council would “connect” with a Government Agency, the Governing Body of a maintained school or a further education institution, a Fire and Rescue Authority, a Police Authority and senior officers within those bodies.

3. PETITIONS

- 3.1 This particular provision is intended *“to make local decision making in relation to petitions made to principal local authorities more transparent, by requiring them to respond to petitions which meet certain criteria and making the response to petitions publicly available”*. Such a petition to be “valid” must meet certain requirements including, being signed by the relevant number of persons specified in the authority’s scheme and designating one of the signatories as being the person with whom the authority may deal in relation to the petition. An “active” petition, is a petition which relates to a relevant matter ie one relating to a function of the authority and otherwise to an improvement in the economic, social or environmental wellbeing of the authority’s area to which any of its partner authorities could contribute. Additionally, such a petition must not be vexatious, abusive or otherwise inappropriate, and no identical or substantially similar active petition has been made within the preceding six months. There would be a requirement for authorities in making a scheme for handling valid petitions to publicise those arrangements, particularly on the authority’s website and through other appropriate mediums. A petition will be considered at a formal meeting of the authority and whether an Inquiry or Public Meeting should thereafter be convened.
- 3.2 A local authority scheme should specify the threshold number of signatures giving foundation for the specific matter of a petition to be debated in full Council. The Secretary of State will have reserve powers to issue guidance as to an appropriate threshold figure and also a power to direct an authority to amend its petition scheme including a specified threshold.
- 3.3 The Bill also introduces the concept that a petition could require “an Officer to be called to account”. Subject to certain pre-conditions as to a validly made petition, this could lead to a relevant Officer of the authority (identified by name or description) being called to account at a public meeting of the authority with the petition providing grounds for the request relating to the discharge of functions for which the Officer is responsible. A relevant Officer, would include both statutory and non-statutory Chief Officers as defined within Section 2 of the Local Government and Housing Act, 1989 and the authority’s Head of Paid Service. A non-statutory Chief Officer is one for whom the Head of Paid Service is directly responsible and one who concerning all or most of his/her duties is required to report directly or is directly accountable to the Head of Paid Service. The Overview and

Scrutiny Committee or other relevant body exercising such powers, can require the relevant Officer (or another Officer if more appropriate) to attend before it to answer questions and subsequently report or make recommendations on the matter to the authority and send a copy of the report or recommendations to the petition organiser. The Overview and Scrutiny Committee or other relevant body must also review the adequacy of the authority's response to the petition; inform the petition organiser of the result of the review and publish those results unless the authority considers that in all the circumstances it would be inappropriate to do so.

4. DUTY OF PUBLIC AUTHORITIES TO SECURE INVOLVEMENT

- 4.1 This provision essentially deals with the issue of stakeholder involvement in public authority functions. Where it is considered appropriate for the representatives of interested persons to be involved in the exercise of any of their functions, authorities must take such steps as they consider appropriate to provide such persons with the information about the exercise of the function, consult with them as to its exercise or involve them in another way. An "interested person" is one likely to be affected by or otherwise interested in the exercise of the functions.

5. SCRUTINY

- 5.1 Following the Local Government Act 2000 and the Local Government Public Involvement in Health Act, 2007, there will be provisions requiring County and Unitary authorities to designate one of their Officers as a "Scrutiny Officer" to discharge various functions to be specified. Essentially, this will concern the promotion of the role and providing support to the authority's Overview and Scrutiny Committee and their membership.

6. AUDIT OF ENTITIES CONNECTED WITH LOCAL AUTHORITIES

- 6.1 The Bill also makes provisions for the Audit Commission to appoint a person to carry out audit functions in relation to what appears to the Commission to be a "qualifying" relevant entity ie, a company, a limited liability partnership or an industrial and provident society. An entity will be connected with the local authority if the financial information about the entity must be included in the local authority statement of accounts for the financial year in question. Authorities will be required to notify the Audit Commission if their "qualifying entity" meets or ceases to meet conditions specified in regulations or if such an entity has ceased to be connected with the local authority.

7. LOCAL AUTHORITY ECONOMIC ASSISTANCE

- 7.1 A principal local authority will be required to prepare an assessment of the economic conditions of its area. The authority may revise the assessment or

any part or aspect of it at any time and must do so if directed by the Secretary of State. In carrying out its economic assessment duty the authority must consult its partner authorities. This will include a variety of public bodies including by way of example, Fire and Rescue and Integrated Transport authorities and Regional Development Agencies. Authorities will also be required to have regard to any guidance given by the Secretary of State as to the contents, timing and revision of economic assessments.

8. REGIONAL STRATEGY

- 8.1 Each region outside London will be required to produce a regional strategy setting out policies relating to sustainable growth and development as well as the use of land in the region or any part of it. Such policies must contribute to the mitigation of an adaption to climate change. This concept of “**Leaders Boards**” is a means “*to enable local authorities to act collectively and decisively at regional levels*”. The notion is that the participating authorities for each region will be required to make a scheme for the establishment and operation of a Leaders Board. Such a scheme, following the requisite consultation must be submitted for approval to the Secretary of State. In turn, the Secretary of State will have power to make funds available to the Leaders Board or to a participating authority and may, if considered appropriate withdraw approval for a scheme if a Board is not operating effectively.
- 8.2 The relevant regional development agency and the Leaders Board would be designated as “responsible regional authorities”. Such bodies would have a variety of responsibilities including, for example, keeping the regional strategy under review and revising the same when they consider it necessary or expedient to do so or as directed or otherwise required by the Secretary of State. This will also encompass the preparation of and publication of a ‘Statement of Community Involvement’ with power to arrange an examination in public in connection with preparing a draft revision of the regional strategy.

9. ECONOMIC PROSPERITY BOARDS

- 9.1 The Secretary of State would have power to create a body corporate known as an “**Economic Prosperity Board**”. This would encompass an area covering the whole or two or more English Local Government areas having continuous boundaries. Such a body would have functions relating to the economic development and regeneration of its area with the Secretary of State having wide powers by order to make regulations in relation to its membership and overall governance. Of note, where two or more authorities have undertaken a review of the effectiveness and efficiency of arrangements to promote economic development and regeneration in their area they may prepare and publish a scheme for the establishment of an Economic Prosperity Board. This would be on the basis, that to do so would be likely to improve the exercise of relevant statutory functions and

economic conditions in the area. The Secretary of State would also have reserve powers, to make an Order establishing such a Board only if having regard to a relevant scheme the Secretary of State considers that to do so is likely to meet the scheme objectives. The Secretary of State would also be obliged to consult each appropriate authority and such other persons as are considered appropriate.

10. COMBINED AUTHORITIES

- 10.1 The Bill also introduces a new corporate combined authority consisting of the whole of two or more English Local Government areas having contiguous boundaries which the Government indicates is to have functions relating to economic development, regeneration and transport. Such combined authorities would have a duty to perform their functions with a view to promoting economic development and regeneration and the Secretary of State may make provision for funding similar to that relating to the Economic Prosperity Boards, with such funding relating to the exercise of economic development and regeneration activities. The Secretary of State may also make an Order dealing with transfer of property rights and liabilities in that regard.

11. MULTI-AREA AGREEMENTS

- 11.1 In the Explanatory Notes accompanying the Bill, multi-area agreements are defined as follows;

“.....between two or more local authorities and certain partner authorities, approved by the Secretary of State..... gives the Secretary of State the power to direct a nominated local authority (the “responsible authority”) to prepare an MAA in consultation with partner authorities and others specified in guidance.”

Through such a multi-area agreement, a local authority and its partner authorities will be placed under a duty to co-operate with each other in determining local improvement targets for the area and to have regard to those targets. Of note, unlike the Economic Prosperity Boards and the combined authority arrangements, a multi-area agreement need not necessarily be based on contiguous areas. The improvement target is that which is related to the improvements in the economic, social and environmental wellbeing of the whole or any part of the relevant area and which relates to one or more of the areas of the local authorities and/or partner authorities.

12. CONCLUSION

- 12.1 Clearly, the provisions in the Bill are subject to change but there is emphasis upon the enhancement of local democratic participation and greater cohesive working between authorities to achieve economic regeneration. There are a number of obligations that appear to be placed upon local authorities, most notably in a collective setting and which are subject to the powers of the Secretary of State in issuing guidance and making or approving arrangements with linkage to the various wellbeing duties as enshrined within earlier legislation. There is an obvious local and regional presence within the Bill and as indicated, it remains to be seen what will be enacted, in due course. At present, Members are requested to note the report and future reports will be brought to the Working Group and the Constitution Committee as and when required or as otherwise considered desirable in the work programme of the Working Group and the Committee.

13. RECOMMENDATIONS

- 13.1 That the report be noted.

14. CONTACT OFFICER

Peter Devlin, Chief Solicitor

CONSTITUTION WORKING GROUP

13th March, 2009



Report of: Chief Solicitor

Subject: PLANNING CODE OF PRACTICE

1. PURPOSE OF REPORT

The purpose of this report is to seek the views of the Working Group and the Constitution Committee to the adoption by the Council of a Planning Code of Practice. A draft of such a Code, which would operate as a “local” Code, if adopted, is appended herewith (**Appendix 1**) for information purposes. Earlier reports, circa 2005/6 were distributed to both the Standards Committee and the Planning Committee, for consideration. Owing to impending legislative changes relating to the involvement of Members with declarable interests, in relation to the discussion (as opposed to the actual decision making process) of regulatory business of the authority, progress upon the adoption of such a Code has been limited. It is therefore prudent for the Working Group and the Committee to consider the attached revised Code. Ultimately Council will need to consider formal adoption of this document. It should be noted that draft versions of the attached Code has been used for the purposes of on – going Member training in planning.

2. BACKGROUND

- 2.1 Following the recommendations of the Nolan Committee on Standards in Public Life, the Local Government Act 2000 established an ethical framework for local government in which each authority's Standards Committee has a pivotal role. Nolan recognised as a significant area of concern probity in the discharge of local authorities' planning functions and, flowing from that, an expected element of an authority's armoury against improper practice is a local Planning Code of Practice.
- 2.2 The attached draft Planning Code of Practice draws upon guidance issued by, amongst others, the Local Government Association, Royal Town Planning Institute and the Audit Commission. The draft code also builds upon the ethical framework established under the Local Government Act 2000, the Local Government and Public Involvement in Health Act 2007 and also general compliance with the provisions of the Human Rights Act 1998.

2.3 The earlier submission of the draft Code to the Standards Committee and its consideration by Planning Committee follows the ‘constitutional’ route to approval by Council, which is anticipated to follow the path set out below –

- Standards Committee
- Planning Committee
- Constitutional Working Group/Committee
- Standards Committee (to deal with any significant changes resulting from the consideration of this document by Planning/Constitutional Committee)
- Council

3. THE DRAFT PLANNING CODE OF PRACTICE

3.1 The main purpose of the code is summarised as follows:-

- Protecting the Council from criticism about the conduct of Members in the planning process.
- Providing a framework to deal with potential problems.
- Assisting in making decisions in the public interest.
- Illustrates the openness and transparency of the decision making process.
- The Planning Code of Practice seeks to explain and supplement the Members' Code of Conduct for the purposes of planning control.

3.2 A failure to abide by the provisions contained within the Planning Code of Practice may lead to:

- The Council being at risk of proceeding on the legality or maladministration of the related decision; and
- Placing a Member(s) at risk of either being named and a report made to the Standards Committee or Full Council, or if the failure is likely to be a breach of the Code of Conduct, a complaint being made to the Standards Committee through the local assessment of complaints process.

3.3 The Government's White Paper: 'Strong and Prosperous Communities' (October 2006) indicated that changes to the Members' Code would include amending the rules on personal and prejudicial interests to remove the barriers to Councillors speaking up for their constituents or for the public bodies on which they have been appointed to serve. These changes have now been incorporated through legislative provision, in revisions to the Code of Conduct and the ethical framework operating within local government. Consequently, where members of the public can make 'representations, give evidence or answer questions' on a matter, by statutory right or otherwise, a Member who has a prejudicial interest can also attend the meeting for that purpose.

However, revisions to the Code of Conduct were not anticipated until May 2007, it was therefore deemed appropriate for Members to consider the

adoption of a Planning Code of Practice, with subsequent changes, as and when the same became necessary.

- 3.4 The draft Code incorporates these changes and up-dates the information contained within previous versions of this document. Members are therefore requested to consider the appended document and to make such recommendations for adoption by the Council as it considers appropriate.

4. RECOMMENDATION

- 4.1 Members are invited to consider and comment on the draft Planning Code of Practice and subject to any amendments arising from consideration by the bodies referred to in para 2.3, to commend its adoption by Council.

HARTLEPOOL BOROUGH COUNCIL

PLANNING CODE OF PRACTICE

**Hartlepool Borough Council
Civic Centre
Victoria Road
HARTLEPOOL
TS24 8AY**

Draft Version – 02/09

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The main points of advice about the conduct expected of Members and Officers are emphasised in bold italics, like this sentence.

1. INTRODUCTION

1.1 The Local Government Act 2000 introduced a new ethical framework to local government, including a Model Code of Conduct for Councillors. Previously the Nolan Committee Report on Standards in Public Life (1997) issued advice to Local Planning Authorities to frame Local Codes of Conduct or Good Practice to cover the question of Probity in Planning. ~~The Code~~ This Planning Code of Practice ("the code") complements and expands on the Model Code of conduct and is an annex to it. The Model Code is essentially concerned with the conduct of the individual councillor's duties, while the Planning Code is concerned with the integrity of the Planning System and its procedures. The Code of Practice is based on guidance from, eg The Nolan Committee, the Local Government Association, the Royal Town Planning Institute, the Standards Board for England, the Audit Commission and others. The Code sets out practices and procedures designed to avoid allegations of malpractice in the operation of the planning system. The aim is to protect the integrity of the planning system as open and fair to all parties.

1.2 The Code will be enforced by the Council's Standards Committee. The Code will be a consideration in any investigation of maladministration by the Local Government Ombudsman. The Code refers mainly to the actions of a Planning Committee as the main decision making body, but it applies especially to other forms of decision making, eg Council where planning issues may be discussed. The Code applies to both Councillors and Officers.

1.3 In terms of Article 6 of the Human Rights Act 1998, (right to a fair trial), the Code, together with the availability of an appeal procedure will meet the requirements of the Article. Ensuring that decisions are properly recorded and supported by adequate reasons. The fundamental basis of the Code is that the Planning System operates in the public interest and therefore decisions affecting private and public interests have to be made openly, impartially, with sound judgement and for justifiable reasons.

1.4 In addition, the role of elected Councillors on a Planning Committee in assessing material planning considerations (see section 5) involves balancing/representing the needs and interests of individual constituents and the community with the need to maintain an ethic of impartial decision making on what can be highly controversial proposals which give rise to great tensions.

2. THE NEED FOR A CODE

2.1 Decisions on planning applications rely on informed judgement within a firm policy context. The determination of planning applications can be highly contentious because the actual decisions affect the daily lives of everyone and the private interests of individuals, landowners and developers. This is heightened by the openness of the system (ie it actively invites public opinion before taking decisions) and the legal status of development plans, decision notices and enforcement action. It is important, therefore, that the planning process is characterised by open, fair, impartial, transparent and defensible decision making.

2.2 One of the key purposes of the planning system is to control development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should be able to show that decisions have been taken in an impartial, unbiased and well-founded way.

3. SCOPE OF THE CODE

3.1 This guidance note sets out the practices which Hartlepool Borough Council follows to ensure that its planning system is fair and impartial, and explains the conduct expected of Borough Council Officers and Members on planning matters.

3.2 It applies to both Councillors and Officers who are involved in operating the

planning system - it is not, therefore restricted to professional town planners or to Members in Committee meetings. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. 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.

3.3 Both councillors and officers are guided by codes of conduct. The statutory code of conduct, supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Employees will be subject to a statutory Employees' Code of Conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. However, not all Planning Officers are members of the RTPI, and parts of the Code of Professional Conduct are incorporated into this Code. The ~~District~~ Borough Council also has a Code of Conduct for Employees, by which all employees are required to abide. In addition to these Codes, the Council's Rules of Procedure govern the conduct of Council business.

3.4 Whilst this Code, and the others referred to above, attempt to be as clear as possible, ***if in doubt about how the guidance applies in particular circumstances seek advice***. Officers should seek advice from the Chief Solicitor, who also acts as the Council's Monitoring Officer under the Local Government and Housing Act 1989. Members can seek advice from the Development Control Manager or from the Principal Solicitor as appropriate.

3.5 Appendix 1 also contains a list of other guidance on planning which is available from the Council.

3.6 This guidance is mainly about planning applications, but also applies to the ways in which the Council handles all applications, planning enforcement matters and also how the Council prepares a ~~Local Plan and the successor~~ its Local Development Frameworks. References to applicants and objectors should therefore generally also be taken to refer to complainants and alleged contravenors in enforcement cases, and to landowners,

developers and objectors involved in plan proposals. The guidance applies to planning matters on which a decision will be taken by the Borough Council.

4. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

4.1 Councillors and Officers have different, but complementary, roles. Both serve the public. Councillors are responsible to the electorate, and are elected to represent all people of the Borough. Officers are responsible to the Council as a whole. They advise the Council and its committees, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may be given to Officers only through a Council or Committee decision. Any other system which develops is open to question. A successful relationship between Councillors and Officers can only be based upon mutual trust, respect and an understanding of each others roles and positions. This relationship, and the trust which underpins it, must never be abused or compromised.

4.2 Therefore:

- ***Individual Councillors should not give instructions to Officers on planning matters.***
- ***Officers' actions will follow Council policy and Committee/Board decisions.***
- ***Political group meetings should not be used to decide how Members should vote on applications and enforcement cases and Councillors are not mandated on these matters by a political group.***

4.3 The Model Code sets out the requirements on councillors in relation to their conduct. It covers issues central to the preservation of an ethical approach to council business, including the need to register and declare interests (see next section), but also appropriate relationships with other members, staff and the public, which will impact on the way in which councillors participate in the planning process. Of particular relevance to

councillors who become involved in making a planning decision is the requirement that a member

“must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.” (Paragraph 6(a) Model Code of Conduct).

4.4 The basis of the planning system is the consideration of private proposals against wider public interests. Much is often at stake in this process, and opposing views are often strongly held by those involved. Whilst Councillors should take account of these views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. **Councillors who do not feel that they can act in this way should consider whether they are best suited to serve on a planning committee.**

4.5 Officers must always act impartially. The RTPI Code of Conduct says planners:

- shall not make or subscribe to any statements or reports which are contrary to their own bona fide professional opinions;
- shall act with competence, honesty and integrity;
- shall fearlessly and impartially exercise their independent professional judgement to the best of their skill and understanding;
- shall discharge their duty to their employers, clients, colleagues and others with due care and diligence; and
- shall not discriminate on grounds of race, sex, sexual orientation, creed, religion, disability or age, and shall seek to eliminate such discrimination by others and to promote equality of opportunity.

These guidelines should apply to all Planning Officers. More detailed guidance and requirements are in the Council's own Code of Conduct for Employees. Through the Local Government and Housing Act 1989, restrictions are placed on the outside activities

of senior staff, such as membership of political parties and serving on another Council.

4.6 Impartiality (particularly crucial in highly contentious matters) is re-enforced by requirements on members in the Model Code. Members are placed under a requirement by the Model Code to:

- treat others with respect; and
- not to do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

4.7 The principles from the Relevant Authorities (General Principles) Order 2001 should guide the conduct of all Councillors. These principles are as follows:

- Selflessness
- Honesty and Integrity
- Objectivity
- Accountability
- Openness
- Personal Judgement
- Respect for Others
- Duty to Uphold the Law
- Stewardship
- Leadership

The actions and conduct of Councillors and Officers should be such as would seem appropriate and above suspicion to an impartial outside observer. Decisions should be taken in the interests of the Borough as a whole, and should not be improperly influenced by any person, company, group or Parish/Town Council. The key is to demonstrate that each Council and Councillor's decision was taken on the facts alone, without any undue outside pressure.

5. WHAT PLANNING DECISIONS ARE BASED ON

5.1 Planning decisions are based on planning considerations and cannot be based on immaterial considerations. The Town and Country Planning Act 1990, as amended, together with Government guidance and cases decided by the courts, define what matters are material to planning decisions.

5.2 It is the responsibility of Officers in preparing reports and recommendations to Members, and in advising Committees, to identify the material planning considerations and to ensure Members are aware of those matters which are not material to planning decisions.

5.3 Section 70 of the Town and Country Planning Act 1990, provides that Members have a statutory duty when determining planning applications, to have regard to the provisions of the development plan where material to the application, and to any other material consideration.

Under Section 38 of the Planning & Compulsory Purchase Act 2004 if regard is had to the development plans the determination must be made in accordance with the plan unless material considerations indicate otherwise.

The development plan consists of:

- The North East of England Plan, Regional Spatial Strategy (Issued 2008)
- The Hartlepool Local Plan (Including Minerals & Waste Policies) April 2006.

After April 2009 a limited number of Hartlepool Local Plan Policies not specifically saved by the Direction of the Secretary of State will cease to have statutory weight.

The Hartlepool Local Plan will in due course be superseded by the Hartlepool Local Development Framework.

5.4 Other material planning considerations include:

- Government guidance contained, for example, in Planning Policy Guidance notes (PPGs), Planning Policy Statements (PPSs), Regional Planning Guidance, Regional Spatial Strategies (RSS), Circulars and Ministerial announcements;
- planning briefs and other 'supplementary planning guidance' approved by the Council following public consultation;
- statutory duties in relation to conservation areas and listed buildings;
- representations made by statutory consultees and other people making

comments, to the extent that they relate to planning matters;

- the environmental qualities of the surrounding area or the visual character of a street (this includes the scale, design and materials of buildings and the landscaping of a site);
- the amenity and privacy of dwellings;
- the character of an area in other senses (in terms of noise or other forms of pollution);
- road safety (both directly as in the case of a dangerous access or indirectly in terms of car parking and traffic generation);
- public services, such as drainage;
- public proposals for using the same land; and
- legitimate planning gain/community benefit.

5.5 There is much case law on what are, and are not material planning matters. ***Planning matters must relate to the use and development of land.*** For example, the following are ***not*** normally planning matters and ***cannot be taken into account in planning decisions:***

- personal and financial considerations;
- private property rights and boundary disputes;
- covenants;
- effects on property and land values;
- developers' motives;
- public support or opposition, unless it is founded on valid planning matters;
- the fact that development has already begun (people can carry out development at their own risk before getting permission and the Council has to judge development on its planning merits);
- the fact that an applicant has carried out unauthorised development in the past;
- "trade objections" from potential competitors;
- moral objections such as activities likely to become addictive, for instance betting shops, lottery kiosks or amusement arcades;
- the belief that an application is submitted by an owner with the intention of selling the property at an enhanced value;
- the loss of an attractive private view (for instance when development is proposed on

the opposite side of the road to or at the rear of an objector's house);

- the fear that an objector's house or property might be devalued;
- the fact that the applicant does not own the land to which his application relates (this can be overcome by agreement with the owner and, if it is not, the development cannot happen);
- the fact that an objector is a tenant of land where development is proposed; any consequences between landlord and tenant are unrelated to the application;
- allegations that a proposal might affect private rights, e.g. restrictive covenants; property maintenance; ownership and private rights of way disputes; boundary disputes; (such considerations are legal matters on which objectors should consult their own solicitor or advisor since it will not be possible for Officers of the Council to advise as to such rights);
- arguments of a personal kind in relation to the circumstances of the applicant. It is essential that Members are aware that planning permission goes with the land. The Government inquiry into planning in North Cornwall ('Inquiry into the Planning System in North Cornwall - DoE 1993') makes it plain that personal preferences are not reasons for granting planning permissions. Personal circumstances may, very exceptionally, have a place in the system. Therefore, information about the applicant should not be material to the consideration of a planning application in the vast majority of cases, and personal circumstances cannot therefore, in general, outweigh planning considerations.

6. DUTIES AND SANCTIONS

The Council's Planning Committee exercises the Borough Council's statutory Local Planning Authority functions and ~~are~~ is the decision makers for the purpose of determining applications other than those matters falling within the Council's Scheme of delegation (see Appendix 4). Decision makers have a very special responsibility and have a number of statutory duties. There are also sanctions against the Council and Members for

a failure to properly discharge the Local Planning Authority function. These duties and sanctions are summarised in Appendix 2.

7. THE DECISION MAKING PROCESS

In reaching a decision on a planning application, Members need to:-

- identify the development plan policies which are relevant to the particular development proposal;
- identify any other material considerations;
- if there are other material considerations, the development plan should be taken as a starting point and the other material considerations should be weighed in reaching a decision. Considerable weight should be attached to the relevant policies of an adopted development plan. Exceptionally, paragraph 21 of The Planning System: General Principles, a document published alongside Planning Policy Statement 1: Delivering Sustainable Development, advises that the personal circumstances of an occupier, personal hardship, or the difficulties of businesses which are of value to the welfare of a local community may be material. Such arguments will seldom outweigh the more general planning considerations. That means such considerations generally have less weight.

At a fundamental level, Members should go through the following three stage process when making a decision:-

Stage 1

- Identify the relevant development plan policies and other relevant material considerations (if any) in respect of the application which need to be taken into account in the decision making process.

- (ii) Identify irrelevant matters which should not be taken into account in the decision making process. These include the applicant's personal qualities such as having a long term family connection with the area, his or her popularity in the community, the fact he/she is a local farmer, the fact that a son or daughter is just about to marry.

Stage 2

Attach sufficient weight to the development plan policies and other material consideration for and against refusal or approval.

Paragraph 21 of The Planning System: General Principles, indicates that less weight is generally attached to personal circumstance. When they arise they fall to be considered not as a general rule, but as an exception to a general rule to be met in special cases.

Paragraph 13 of The Planning System: General Principles, indicates that Members must have proper regard to Government Statements of Planning Policy which indicates the weight to be given to relevant considerations. If Members elect not to follow relevant statements of the Government's Planning Policy, they must give clear and convincing reasons.

Stage 3

Weigh the material considerations in reaching a decision.

A failure to follow the proper decision making procedure can give rise to a proceedings for a Judicial Review or a finding of maladministration by the Local Government Ombudsman.

- ***In the decision making process, Members should not take into account irrelevant matters, allow them to outweigh important planning considerations and fail to take fully into account Government***

guidance on the weight to be attached to relevant considerations.

- ***Members should determine applications in accordance with the advice given to them by their professional officers unless they have good planning reasons, in the knowledge of all material considerations, to take a decision contrary to the officer's recommendation.***

8. LOBBYING OF AND BY COUNCILLORS

8.1 It is important to recognise that lobbying is a normal and perfectly proper part of the political process: those who may be affected by a planning decision will often seek to influence it through an approach to their elected Ward Member or to a Member of the Planning Committee. As the Nolan Committee's Third Report states: 'local democracy depends on Councillors being available to people who want to speak to them. It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representative, the Councillors themselves' (paragraphs 285, 288). However, such lobbying can, unless care and common sense are exercised by all the parties concerned, lead to the impartiality and integrity of a Councillor being called into question.

8.2 Councillors need to take account of the general public's (and the Ombudsman's) expectation that a planning application and other applications will be processed and determined in a transparently open and fair manner, in which Members taking the decision will take account of all the evidence presented before arriving at a decision, and that to commit themselves one way or the other before hearing all the arguments and evidence makes them vulnerable to an accusation of partiality. The determination of a planning application, or of a planning enforcement case, is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and

fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration.; or to the Standards Committee that a member has breached the local code.

8.3 A Councillor who represents a ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding publicly to support a particular outcome - even campaign actively for it - it will be very difficult for that Member to argue convincingly when the Committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented (perhaps in some respects for the first time) at Committee. Whilst in most circumstances this may not amount to a prejudicial interest in terms of the Model Code of Conduct, **the proper course of action for such a Member would be to make an open declaration and not to vote.** This can be seen, however, as a severe restriction on the Member's wish - duty even - to represent the views of the electorate. In most cases it should be possible for a Member to listen to a particular body of opinion, without engaging in lobbying for a particular outcome, and wait until the Planning Committee, to hear all the evidence presented, before making a final decision.

8.4 It is very difficult to find a form of words which covers every nuance of these situations and which gets the balance right between the duty to be an active ward representative and what the National Code of Local Government Conduct calls the 'overriding duty as a Councillor ... to the whole local community'. However, the following guidance will be appropriate in most cases.

8.5 Councillors who are lobbied on a planning matter before the Planning Committee:

- *may listen to what is being said;*
- *may give procedural advice eg to write to the Director of Regeneration and Planning, the name of the Case Officer,*

the deadline for comments, whether the application is to be determined by the Planning Committee or delegated to officers, how decisions are reached through Officer recommendation /Planning Committee;

- *should refer the person and any relevant correspondence to the Case Officer, so that their views can be recorded and, where appropriate, summarised in or attached to the report to the Committee;*
- *should take great care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have considered all the evidence and arguments;*
- *should make it clear that Councillors will only be in a position to take a final decision after having heard all the relevant evidence and arguments at Committee;*
- *should not openly declare which way they intend to vote in advance of the relevant Committee meeting, or otherwise state a commitment to oppose or support the application;*
- *should not negotiate detailed planning matters with applicants, agents, objectors, etc;*
- *should pass relevant correspondence to the Case Officer prior to any Committee meeting;*
- *should report instances of significant, substantial or persistent lobbying to the Development Control Manager or the Director of Regeneration and Planning.*

8.6 Councillors who have openly declared their voting intention in advance of the relevant Committee meeting should make an open declaration and leave the meeting, taking no part in debate or voting.

8.7 To avoid impressions of improper influence which lobbying by Members can create:

- *Councillors should in general avoid organising support for or opposition to a planning matter to be determined by the Borough Council, and should not lobby other Councillors - such actions can easily be misunderstood by parties to the application and by the general public;*

- *Councillors should not put pressure on Officers for a particular recommendation;*
- *political group meetings should not be used to decide how Members should vote on planning matters;*
- *Councillors should not act as agents or advocates for planning applications or any other applications, enforcement cases or proposals to be determined by the Borough Council. Where a Councillor is involved in a particular planning matter, she/he should take care not to appear to try to influence other Members, and should declare an interest at the relevant Committee meeting.*
- *Whenever a Member is approached or lobbied on any particular application Members should consider distributing the draft letter attached as Appendix 3 which makes clear the neutral stance which Members need to adopt to remain impartial pending consideration of all the material facts at the Committee meeting.*
- *If Members attend private site meetings in their ward at the request of the applicant they should express no opinion on the merits of the application and should normally advise the applicant that the Member may also speak to other interested parties including objectors, again, without expressing any opinion on the merits of the application prior to determination before Planning Committee.*
- *Members should not normally undertake private site inspections in another Member's ward without prior notice to the Ward Member. Again Members should express no opinion on the merits of the application.*

9. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS

9.1 The Council encourages pre-application discussions between Planning Officers and potential applicants. These bring advantages to all parties: they can avoid applications being made which are clearly contrary to policy, and so avoid unnecessary worries for those who could be affected; they can avoid abortive work for the Council and applicants by giving

clear information about applicable policies, etc before proposals are designed; and so they can improve the quality of applications and development. The Statement of Community Involvement provides further details on these matters.

9.2 However, discussions might be seen (especially by objectors) as part of a lobbying process. In order to avoid such problems, pre-application discussions should take place within clear guidelines. Although the term 'pre-application' has been used, the same considerations apply to any discussions which take place before a decision is taken:

- *The Officer should always make it clear at the outset that the discussions will not bind a Council to making a particular decision, and that any views expressed are personal and provisional. By the very nature of such meetings, not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.*
- *Advice should be consistent and based upon the development plan and material considerations.*
- *Where the Director of Regeneration and Planning Services or the Assistant Director (Planning and Economic Development) is the decision-maker (for delegated matters - see later), he/she should normally not meet the applicant, agent or objectors to discuss a case without another Officer present.*
- *A written note should be made of all discussions with the applicant, agent or objectors. A follow-up letter is advisable, at least when documentary material has been left with the Council. A note should also be taken of telephone discussions.*
- *Whilst Councillors will not normally be involved in pre-application or pre-decision discussions, if a Councillor is present he/she should be accompanied by an Officer. The Councillor should be seen to be advised by the Planning Officer on development plan and other material considerations, and the Officer should take a note of the meeting.*

9.3 Applicants and potential applicants sometimes ask for advice on whether planning permission will be granted in particular circumstances. Advice may also be sought on the lawful use of land. For clarity, and to avoid a future decision on a planning application being compromised:

- *Officers should normally ask someone requesting advice to put the request in writing - so that it is clear on what proposal or circumstances advice is being given.*
- *Written replies to such requests will contain a caveat that advice cannot bind a future decision of the Council on any subsequent application.*
- *Persons seeking advice about the lawful use of land should be advised that Parliament has provided a procedure for a Local Planning Authority to certify what a lawful use of land is by means of an application for a Certificate of Lawfulness of Existing Use of Development. Advice from an Officer cannot legally circumvent this procedure.*
- *Officers will be unable to say what their recommendation is on a particular planning matter until all issues have been considered and the papers published for the relevant Committee.*

10. REGISTRATION OF INTERESTS

The Local Government Act 2000 and the Model Code place requirements on members on the registration and declaration of their interests and the consequences for the member's participation in consideration of an issue, in the light of those interests. These requirements must be followed scrupulously and councillors should review their situation regularly. Guidance on the registration and declaration of interests will be issued by the Standards Board and advice may be sought from the Council's Monitoring Officer. Ultimate responsibility for fulfilling the requirements rests individually with each Councillor.

A register of members' interests will be maintained by the Council's Monitoring Officer, which will be available for public

inspection. A member must provide the Monitoring Officer with written details of relevant interests within 28 days of his election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the member becoming aware of such changes.

11. DECLARATION OF INTERESTS BY MEMBERS AT COMMITTEE

11.1 The Model Code abandons the use in the old National Code of the terms 'pecuniary' and 'non-pecuniary' interests. Instead, it uses the terms '**personal**' and '**prejudicial**' interests. The code defines a personal interest in any matter under discussion as:

(1) if the matter relates to an interest in respect of which the member has given notice in the statutory register of members' interests; and

(2) if a decision upon it might reasonably be regarded as affecting to a **greater extent than other council tax payers, ratepayers or inhabitants of the authority's area**, the well-being or financial position of themselves, a relative or a friend, or

- any employment or business carried on by such persons;
- any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
- any body which the member is required to register in the statutory register of interests, in which such persons hold a position of general control or management.

11.2 Where a member considers he has such a personal interest in a matter, he must always declare it, but **it does not then necessarily follow that the personal interest debars the member from participation in the discussion.**

11.3 The member then needs to consider whether the personal interest is a **prejudicial** one. The code provides that a personal interest becomes a prejudicial one “...if the interest is one which a member of the public **with knowledge of the relevant facts** would **reasonably** regard as so significant that it is likely to prejudice the member’s judgement of the public interest”. A member with a prejudicial interest shall declare it and leave the room, **unless members of the public are allowed to make representations, give evidence or answer question about the matter** by statutory right or otherwise. If that is the case, the member can also attend the meeting for that purpose. However, the member must immediately leave the room once they have finished or when the meeting declares that the member has finished (if that is earlier). For the assistance of doubt, the member should not remain in the public gallery to observe the vote on the matter.

11.4 The code will include some exceptions to this. For example, if the matter under discussion relates to:

- another authority of which the Councillor is a member;
- another public authority in which the councillor has a position of general management or control;
- a body to which the councillor has been appointed or nominated as a representative of the authority.

Then, in these circumstances, the interest **may not be regarded as prejudicial**. In practice, therefore, the member would need to declare the interest, but could participate.

11.5 It can be seen that these provisions of the code are an attempt to separate out interests arising from the personal and private interests of the councillor and those arising from the councillor’s wider public life. The emphasis is on a consideration of the status of the interest in each case by the councillor personally, and included in that judgement is a consideration of the perception of the public, acting reasonably and with knowledge of the facts. Whilst the Standards Board, is

mandated to provide guidance on the Code of Conduct, the decision in the end will be for the councillor alone to take.

11.6 Translated to a councillor’s involvement in planning issues, the two stage test of personal and prejudicial interests will, as now, require a councillor to abstain from involvement in any issue the outcome of which might advantage, or disadvantage the personal interests of the councillor, his family, friends or employer.

11.7 The exceptions made to the definition of prejudicial interests relating to membership of outside bodies mentioned above are attempts to clarify the nature of such interests and to encourage participation in such cases. It appears that too often in the past, members had been prevented from participation in discussions in such circumstances, on the basis that mere membership of another body constituted an interest that required such a prohibition, even in cases where the member was only on that body as a representative of the authority.

11.8 When considered in the context of planning matters, this approach will require the exercise of particular judgment on the part of the councillor. The use of the term ‘prejudicial’ to describe the interest is helpful here. If a planning matter under consideration relates to another body upon which the councillor serves, the exemption in the Model Code would suggest that the member could participate in a decision on that matter - i.e. membership of that body could not be considered per se a prejudicial interest, which would bar the member.

11.9 However, if a member, in advance of the decision-making meeting had taken a firm view on the planning matter, either in meetings of the other body or otherwise, they would not be able to demonstrate that, in participating in a decision, all the relevant facts and arguments had been taken into account, they would have fettered their discretion. Were they to participate in a decision in those circumstances, they might place their authority in danger of Judicial Review.

11.10 There will be occasions when members will wish to press for a particular development which the member regards as beneficial to the development of the area. Should that member be able to vote on any planning application relating to that development? The appropriate action is not clear cut, and may depend on the particulars of the case. However, the general advice would be that a member in such circumstances may well be so committed to a particular development as the result of undertaking the responsibilities of furthering the development of the area, that he or she may well not be able to demonstrate that they are able to take account of counter arguments before a final decision is reached. Indeed, the member may be seen as an advocate on behalf of the authority or the other relevant body for the development in question. In such circumstances, the appropriate approach is likely to be that the member advocating for the development should not vote on the relevant applications.

12. PARISH OR TOWN COUNCIL MEMBERSHIP

12.1 The Council consults the relevant Parish Council or Parish Meeting on every planning application. Planning Officers may, on request, attend a Parish Council meeting early in the life of an application to explain the facts of the application and any relevant Development Plan policies.

12.2 Difficulties can arise for Councillors who are members of a Parish Council as well as the Borough Council. By taking part in a Parish Council meeting when their comments on an application are agreed, a Borough Councillor will be seen to have made up her/his mind in advance of hearing all the issues at the decision-making Borough Council Committee. The member could be considered to have fettered his or her discretion. In those circumstances the member should not participate at the ~~district~~ Borough Council meeting.

In such cases the member has been excluded not because of the Code but because the member's previous actions had fettered his or her discretion and possibly laid the Borough Council open to the objection that the planning process had been tainted. So, a member has to

choose whether to form a view at an early stage of the process and campaign for or against the planning applications but be excluded from the final decision-making; or reserve judgment until all views have been considered and only then form a view.

'Dual' Members should therefore either:

- *not take part in the discussion of an application at the Parish Council meeting at which comments are agreed; or*
- *not take part in the discussion/decision on the application at the Borough Council Committee;*

Furthermore:

- *although the consultation response from a Parish Council is a relevant consideration, Members should not automatically defer to the Parish Council view, because Parish Councils do not have the advice of professional Planning Officers in reaching their decision.*

13. UNAUTHORISED DEVELOPMENT OR BREACH OF LISTED BUILDING CONTROL

13.1 Members or Officers who are aware of a breach of planning or listed building control on land under their ownership or control should promptly advise the Development Control Manager or the Director of Regeneration and Planning of the breach in writing.

13.2 Breaches of planning or listed building control involving a Member or an Officer should be promptly investigated by the Development Control Manager and the Director of Regeneration and Planning and be the subject of an enforcement report to Planning Committee.

14. OFFICER REPORTS TO COMMITTEE

14.1 To ensure that Committees give due consideration to the development plan and other material considerations, all Committee decisions on planning applications,

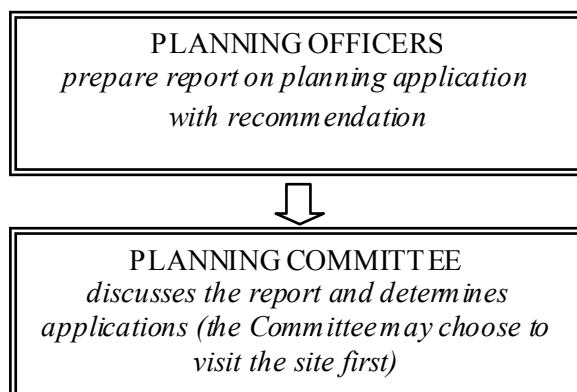
enforcement cases and other proposals will normally be taken only after the Committee has received a written Officer report. Written Officer reports will be agreed through the Development Control Manager and will reflect the collective view of the Department - not the view of the individual author.

14.2 Reports should be accurate and should:

- cover, amongst other things, the substance of objections and the views of people who have been consulted;
- include reference to relevant material and applicable policies and their implications for the case; the site or related history (where relevant) and any other material considerations;
- have a written recommendation of action; oral reporting should be rare and be carefully minuted when it occurs;
- contain an appraisal of the planning considerations which clearly justifies the recommendation and broadly indicates the weight which can be given to any opposing considerations;
- if the recommendation is contrary to the provisions of the development plan, clearly state the material considerations which justify this;
- describe the purpose and content of any conditions, planning agreement or obligation proposed in association with the planning permission.

15. COMMITTEE PROCEDURES

15.1 The procedure for processing planning applications considered by the Council's Planning Committee may be summarised as follows:



15.2 Reports are available to the public five working days before the Committee on request. Paragraph 14.2 describes the content of reports. The application files, containing all comments, are also available at that stage. Late letters and other information may be put to Committee and copies of these are normally available for inspection. The public (including applicants and objectors) can attend Committee meetings and may speak under the terms of the Council's public speaking policy.

15.3 A guidance leaflet on public speaking and the process to be followed is available from the Borough Council. In essence, the officer will explain what is proposed and highlight the key planning issues. An applicant (or agent) wishing to speak on an application can ask to address the Committee for a defined time. Members may then ask questions of that individual if they wish. If an objector wishes to speak they can then do so for a defined time. Again, Members may ask questions of that individual. Members will then debate the merits of the case and arrive at a decision.

15.4 It is important that Members are present throughout all the debate on an item. If any Member has to leave the Committee meeting for any reason, thereby missing any part of the proceedings, he/she should take no further part in the voting arrangements for the item(s) considered during their absence.

15.5 The Planning Committee may agree or disagree with the report and recommendation (but see sections 18 and 19 below). Having considered all the relevant planning matters, the Committee may:

- grant planning permission, usually with appropriate planning conditions;
- refuse planning permission, with justified planning reason(s);
- defer the application for further consideration.

15.6 Planning enforcement decisions are normally taken by the Planning Committee. A written Officer report will normally be prepared in advance of the Committee. The report and the discussion at the Committee on some enforcement matters may not be available to the public, for example if the

Council is considering a prosecution in the courts. Schedule 12A of the Local Government Act 1972 as amended sets out what can be considered in private.

15.7 Decisions on Local Development Framework proposals are referred to the Cabinet or Portfolio Member, following consideration of a written Officer report.

15.8 The procedures governing the conduct of meetings are set out in the Council's Constitution. However, the general public who attend these meetings will usually not be familiar with the Council's Constitution, or this Code. It is therefore important that decisions are made on relevant grounds and that this is the impression left with the public who attend. Responsibility for this rests primarily with the Chairman of the meeting, assisted where appropriate by officers. To facilitate this:

- *a briefing for the Chairman and Vice-Chairman of the Planning Committee will be held after the Officer reports and recommendations have been published. The purposes of these briefings is to inform the Chairman and Vice-Chairman of the issues, to ensure that the rationale for the Officer recommendation is explained, and to identify any potentially problematic or controversial items;*
- *one or more Chartered Town Planners will be present at all Planning Committee meetings at which planning matters are considered;*
- *a Legal Officer will normally also be present.*

16. COMMITTEE SITE VISITS

16.1 The Planning Committee may sometimes decide to visit a site prior to determining an application. Site visits sometimes result from a request by a Ward Councillor. It is acknowledged that this is a proper part of the representational role and should normally be acceded to, so long as the Ward Councillor can justify his/her request in relation to material planning considerations.

Site visits should not be employed merely to appease local interest in an application.

16.2 However, site visits cause delay and add costs for the applicant and Council, and should only be used where there are substantial benefits. Therefore:

- *A site visit is likely to be necessary only if the impact of the proposed development is difficult to understand from the plans and any supporting material, including photographs taken by Officers, or if the proposal is particularly contentious.*
- *The reasons for a site visit should be clearly stated and minuted.*
- *All Members of the Planning Committee will be invited and should make every effort to attend, so that they understand the issues when the matter is considered at the following Committee meeting.*

16.3 Site visit meetings will be conducted in a formal manner:

- *The Chairman should start by explaining the purpose and conduct of the site inspection.*
- *The Officer will describe the proposal and highlight the issues relevant to the site inspection and other material planning considerations.*
- *The Officer will be asked to point out relevant features which can be observed. Members may also wish to point out features which can be observed, or to ask factual questions of the Officer.*
- *To avoid giving an impression of being lobbied, Members should not listen to or talk to any individuals whilst on site, unless being addressed as a group. Any comments should be made to the whole group through the Chair.*
- *The public, applicant or objector may attend the site inspection and will be invited by the Chair to draw Members' attention to any salient features or to any relevant factual information.*
- *Other than to draw Members' attention to any salient feature or to clarify a factual point, the public, applicant and objector will not be allowed to participate.*
- *To avoid Members being spoken to individually, the Chairman should*

endeavour to keep the Committee together as a group.

- *No discussion or decision-making will take place on site.*
- *No hospitality will be accepted before, on or after site visits.*
- *Members or Officers who have any declarable interest which means they should not participate at Committee on determining the application should not attend a site inspection.*

17. DECISIONS DELEGATED TO OFFICERS

17.1 The Council has agreed that decisions on certain types of application can be taken by the Director of Regeneration and Planning through the Development Control Manager or the Assistant Director of (Planning and Economic Development). These are less contentious proposals, although they can be significant in scale. This includes house extensions, advertisements, industrial and housing developments, the discharging of planning conditions and breaches of planning conditions imposed by a Committee. The full list of decisions delegated to the Director of Regeneration and Planning is set out in Appendix 4. The system allows quicker decisions to be taken on straightforward matters.

18. DECISIONS CONTRARY TO THE DEVELOPMENT PLAN

18.1 Planning decisions must normally be taken in accordance with the Development Plan (see paragraph 5.3).

18.2 *If Officers are recommending granting planning permission contrary to the development plan:*

- *The decision will always be taken by Committee, and not as a delegated decision.*
- *The Officer's report to the Committee must clearly identify the material planning considerations and how they justify overriding the Development Plan.*

- *The application will have been advertised by a site notice and a local newspaper advertisement, in accordance with the Town and Country Planning (General Development Procedure) Order 1995 Article 8.*

18.3 If the decision would be a significant departure from the Development Plan, (as defined by Government Direction) the application will be referred - normally after the Planning Committee has agreed a recommendation - to the Secretary of State for Communities and Local Government to enable him/her to decide whether to 'call in' the application to be decided centrally.

19. DECISIONS CONTRARY TO OFFICER ADVICE

19.1 If the Planning Committee makes a decision contrary to the Officers' recommendation on a planning application or enforcement case, then:

- *the proposer of the motion to go against the Officers' recommendation, or the Chairman, should state the planning reasons for the proposed decision before a vote is taken; the Ombudsman has said that the reasons should be clear and convincing, and be material planning considerations (see section 5 above);*
- *the Planning or Legal Officer present at the meeting should be given the opportunity to comment upon whether the proposed reasons for the decision are planning matters and, if an approval is proposed, to recommend appropriate planning conditions;*
- *if the decision would be contrary to the Development Plan, then the Officer should comment on the extent to which the other planning considerations could be seen to override the Development Plan, and on whether the decision would be a significant departure from the plan requiring (see section 18 above);*
- *where Planning Committee indicates that it is not minded to accept the Officers recommendation for approval, the planning application should be deferred to the next available meeting of Planning*

Committee where so requested by the representatives of the Director of Regeneration and Planning. This deferral period enables Officers to prepare clear and convincing planning reasons for refusal;

- *a detailed minute of the Committee's reasons for departing from the recommendation should be taken and a copy placed on the application file; if the decision is contrary to the Development Plan, the minute should state that and clearly set out those planning considerations which override the development plan.*

19.2 If a Committee wishes to amend or add conditions to an approval, Officers should be requested to draft the detailed wording of the conditions in line with the Committee's wishes. Both reasons for refusal and reasons for supporting conditions need to clearly refer to applicable Development Plan policies, where relevant.

20. APPROVING REPEAT APPLICATIONS FOR DEVELOPMENT PREVIOUSLY REFUSED

20.1 One complaint that frequently arises, and has been investigated by the Local Government Ombudsman, is the approval of a planning application where an application for substantially the same development has previously been refused, where there has not been a significant change in circumstances.

20.2 The principles which can be distilled from Ombudsman cases are as follows:-

- there is perversity and maladministration, if a Local Planning Authority approves a planning application, which has previously been refused, where there has not been a significant change in the planning circumstances;
- the fact that there has been a significant change in the membership of the Planning Committee does not justify inconsistency between current and previous decisions;
- the perversity of approving a planning application, which has been previously

refused, where there has been no significant change in the planning circumstances, is maladministration if:-

- insufficient weight has been given to Officers' recommendations and Central Government guidance; and
- there is a failure to give and record reasons for the authority's change of mind.

20.3 Members are advised that a serious risk of challenge is posed by a failure to give and record clear and convincing planning reasons for the approval of planning applications for which there is a history of refusals by the Council and Inspectors appointed by the Secretary of State where there has been no significant change in the planning circumstances.

20.4 Therefore:

- *If a Committee is minded to approve an application for development previously refused, the proposer of the motion for approval or the Chairman should state what the significant change in the planning circumstances justifying approval are before a vote is taken.*
- *If there is a history of refusals by the Council and Inspectors appointed by the Secretary of State, the proposer of the motion for approval or the Chairman should also state why the Inspector's decision should no longer be followed before a vote is taken.*

21. DEVELOPMENT PROPOSALS SUBMITTED BY, OR AFFECTING, COUNCILLORS AND OFFICERS

21.1 Proposals to their own authority by serving and former Councillors and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. Proposals can take the form of either planning applications or Development Plan proposals, or may involve planning enforcement. It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism.

21.2 Planning proposals from Officers and Councillors (which are otherwise deemed by the Director of Regeneration and Planning, or his representative, to be contrary to the principles set out in the scheme of delegation) shall proceed to determination before Planning Committee, subject to the following principles:

- *Serving Councillors and Officers who submit their own proposal to the authority they serve should play no part in the decision-making process for that proposal.*
- *Such proposals will be reported to Committee and not dealt with by the Director of Regeneration and Planning under delegated powers.*
- *The Council's Monitoring Officer should be informed of such proposals by serving Councillors, and the Officer's report to the Committee will show that the applicant is a Councillor.*
- *Councillors and Officers should never act as agents for people pursuing a planning matter with their own authority.*

21.3 For proposals submitted by close relatives and friends of Officers involved with the development control process:

- *The Officer concerned will have no involvement with the application.*
- *The Officer concerned should alert the ~~Director of~~ Director of Regeneration and Planning and/or the Development Control Manager to the proposal.*

21.4 Where a planning proposal directly affects the property or personal interests of a Councillor, she/he should play no part in the decision-making process. This would apply, for example if a Councillor submitted comments, as a neighbour, on a planning application.

21.5 Similarly, an Officer should have no involvement in processing a planning proposal which directly affects her/his property or personal interests.

22. THE COUNCIL'S OWN DEVELOPMENTS

22.1 Proposals for the Council's own development have to be treated in the same way as those by private developers.

- All applications for the Council's own development, which are contrary to the principles set out in the scheme of delegation, will be reported to Committee and not dealt with by the officers under delegated powers.
- All applications for the Council's own development will be the subject of a written Officer report, as with other applications.

23. THE MEDIA

23.1 The principles of this Code also apply to press contact. Councillors and Officers when commenting to the media on planning matters should:

- *have regard to the points made in the section on lobbying (Section 8);*
- *ensure that they do not give the impression that they have pre-judged the planning application;*
- *make clear that Councillors will retain an open mind until such time as the full facts are available and these are debated by the appropriate Committee;*
- *for delegated applications, make clear that the Director of Regeneration and Planning or his appointed representative will retain an open mind until such time as the full facts are available and presented for decision.*

23.2 Any Officers can provide facts about a planning matter which are in the public domain and available to the media. However, the media should be referred to the Director of Regeneration and Planning or his appointed representative for attributable comments.

24. RECORD KEEPING AND COMPLAINTS

24.1 The Council has established its own Complaints Procedure. Complaints are first investigated within the Department by an Officer more senior than the Case Officer who has no connection with the planning system.. If the complaint cannot be resolved within the Department it will be referred to the Performance Portfolio Holder for consideration in accordance with the Council's Complaints Procedure.

24.2 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. It is not possible to keep a full note of every meeting and conversation. However, the guiding rule is that every case file should contain an account of the main events throughout its life. It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached.

- *The main source of this documentation will be the Officer report to Committee and, if the Committee does not agree the recommendation, the Committee minutes.*
- *For delegated applications, a formal note of the main planning considerations is written and kept on file.*
- *These principles apply equally to enforcement and Development Plan matters.*
- *All Committee reports and delegated decision reports will be checked and agreed by the Development Control Manager.*
- *A written note should be kept of all potentially contentious meetings and telephone conversations: this may be in the form of a follow-up letter. Whilst it will be impossible to keep a full note of every meeting, conversation and site visit, a record should be kept of significant events and site visits which have taken place. The extent of the note should be in*

proportion to the significance of the event.

24.3 Section 14 gives more details on what reports contain.

25. TRAINING

25.1 As section 5 above explains, the planning system is a complex mixture of statute and case law, and of local and national policy, balancing private and public interests. The declaration of interests is also an area which demands the exercise of well-informed judgement.

- A copy of this Code of Practice will be given to each Councillor and Officer in the Regeneration and Planning Department, including new Councillors and employees.
- The Council will provide periodic training events for Councillors on planning, which all Members should endeavour to attend.
- Members newly elected to the Council should attend a training event on planning within their first year on the Council. A special training event for Members will be held after each four-yearly election of all Members.
- The Council will employ a Chartered Town Planner as Development Control Manager and will attempt to employ trained or Chartered Town Planners to operate its main planning functions.
- The Council will, as far as possible, assist Officers in carrying out training and development activities which enable them to meet the requirements of their post, and enable them to fulfil the 'continuous professional development' requirements placed on Chartered Town Planners.

26. LEARNING FROM PAST DECISIONS

26.1 The lessons to be learnt from any complaint against the Planning Service should be considered, recorded, and any necessary changes to procedures implemented. There will be an annual review by Planning Officers of a selective number of planning decisions which will be appraised through training and

other initiatives, including the visiting of affected sites and so considering where appropriate any complaints to learn from experience.

26.2 The Council is working towards a more systematic way of learning lessons from a sample of past planning decisions and outcomes.

27. HOSPITALITY

27.1 *Councillors and Officers are advised to treat with extreme caution any offer or gift, favour or hospitality which is made to them personally.*

27.2 Councillors should also be very cautious about accepting gifts and hospitality. The Model Code requires any members receiving any gift or hospitality, **in their capacity as members**, over the value of £25, to provide within 28 days of its receipt written notification of the details to the Monitoring Officer of the Council. Such details will go in a register of gifts and hospitality, which will be open to inspection by the public.

27.3 Similarly, officers, during the course of carrying out their duties, may be offered hospitality from people with an interest in a planning proposal. Wherever possible, such offers should be declined politely. If the receipt of hospitality is unavoidable, officers should ensure that it is of the minimal level and declare its receipt as soon as possible. The Council maintains a hospitality book to record such offers whether or not accepted. This book should be reviewed regularly by the Council's Monitoring Officer. The requirement to register any such hospitality is likely to be a feature of the statutory code of conduct for employees.

27.4 The presumption should be that any gift is normally refused.

- Letters containing racist comments will be returned to the writer;
- Racist comments will not be referred to in reports to Committees;
- Persistent racist comments will be referred to the Commission for Racial Equality or the Police. This is to ensure that the Council abides by Sections 31 and 33 of the Race Relations Act 1976.

28.2 Any applicants suggesting that they have been affected by racial abuse in whatever form, will have their application considered by Planning Committee and the Monitoring Officer will be advised of the circumstances and representations received.

28. RACIST COMMENTS

28.1 The Council will follow the procedures in the RTPI note "Planning Authorities and Racist Representations". In particular:

APPENDIX 1: OTHER GUIDANCE**FROM HARTLEPOOL BOROUGH COUNCIL**

Code of Conduct for Members
Code of Conduct for Employees
Council's Constitution
Statement of Community Involvement (2006)

FROM OTHER ORGANISATIONS

‘Code of Professional Conduct’ The Royal Town Planning Institute, (January 2001).

‘Guidance for Good Practice on Members’ Interests’, the Commission for Local Administration in England, April 1994.

‘Probity in Planning’, Local Government Association, 1997.

‘The Role of Elected Members in Plan Making and Development Control’, RTPI, 1997.

‘Planning Authorities and Racist Representations’, RTPI, July 1996.

‘Probity in Planning (Update)’, Local Government Association (March 2002)

‘Lobby groups’, dual-hatted members and the Code of Conduct – Guidance for members, Standards Board for England (September 2004).

‘Positive Engagement’ – A Guide for Planning Councillors (2005 – updated)

‘Model Members Planning Code of Good Practice – ACSeS (2003 –updated)

APPENDIX 2: DUTIES AND SANCTIONS**1. DUTIES OF MEMBERS**

In determining applications, Planning Committee is not bound to follow the Officer's recommendation contained in a report. The Committee should form its own views as to whether permission should be granted. However, this should not be interpreted as meaning that there are no possible grounds for challenge in the Courts, by the Ombudsman or some other external agency whatever Members do for example in approving applications contrary to Officer's recommendations, National and Development Plan Policy.

Members of the Local Planning authority have the following duties:-

- (i) Members must at all times act within the law;
- (ii) The overriding duty of Members is to the whole community, not to individual applicants. For example, the avoidance of sporadic development in the open countryside is in the interests of the whole community;
- (iii) Members have a statutory duty when determining planning applications to have regard to the provisions of the development plan where material to the application and to any other material considerations (Section 70 of the Town & Country Planning Act 1990).
- (iv) Members have a statutory duty to determine planning applications in accordance with the development plan, unless material considerations indicate otherwise (Section 38 of the Planning and Compulsory Purchase Act 2004).
- (v) Members have a statutory duty when determining applications for listed building consent to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses: Section 16 of the Planning (Listed Building and Conservation Area) Act 1990.
- (vi) Members have a statutory duty when considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest: Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- (vii) Members have a statutory duty when determining planning applications in respect of buildings or other land in a conservation area, to pay special attention to the desirability of preserving or enhancing the special character or appearance of the area: Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. SANCTIONS AGAINST LOCAL PLANNING AUTHORITIES AND MEMBERS

Sanctions against Local Planning Authorities and Members are necessary because duties without sanctions would be potentially unenforceable. This part of the code briefly examines the remedies available to aggrieved persons who consider that the Council has acted unreasonably or unlawfully in making a planning decision and the implications these actions may have for the Council and Members.

The consequences of an unlawful or unreasonable planning decision are that the Council and Members would become subject to the scrutiny of the following external agencies:-

(1) THE STANDARDS COMMITTEE, THE STANDARDS BOARD FOR ENGLAND AND THE ADJUDICATION PANEL

Part III of the Local Government Act 2000 introduced the Ethical Framework for Local Government. This is a statutory framework within which members must operate. Local Authorities including District Councils, Parish and Town Councils have experienced a significant strengthening of the standards of conduct arrangements within which elected and co-opted members must operate, backed up by an external regulator to ensure compliance.

The Ethical Framework has four key elements:

- (1) Codes of Conduct;
- (2) a national regulatory and advisory organisation called the Standards Board for England;
- (3) the Adjudication Panel which may set up a tribunal to consider cases of misconduct by Members and;
- (4) Local Authority Standards Committees.

The framework is concerned with the proper behaviour of politicians in public life, namely:

- (1) the way in which politicians conduct themselves in decision making;
- (2) their relationships with constituents, officials and outside interests; and
- (3) how conflicts of interest are declared and handled in the decision making environment of a Council.

(a) STANDARDS COMMITTEE

Since 8 May 2008 the responsibility for considering complaints that a member may have breached the Code of Conduct rests with the Standards Committees of local authorities. The Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007, provides that a Standards Committee can refer complaints that a member has breached the Code of Conduct to the Monitoring Officer for investigation or other action. The Standards Committee also has discretion to refer a complaint to the Standards Board for England for investigation.

(b) STANDARDS BOARD FOR ENGLAND

The Board, may instruct an Ethical Standards Officers to conduct an investigation. Ethical Standards Officers have considerable autonomy in deciding the approach they will take, with extensive statutory powers to require Councillors to:

- (a) attend before him or her in person;

- (b) furnish information and produce correspondence.

If a Councillor fails to comply with a request of an Ethical Standards Officer this is an offence with a maximum fine on conviction of £1000.

An Ethical Standards Officers will decide either that:

- (a) there is no evidence of misconduct;
- (b) there is evidence but no action needs to be taken;
- (c) that the matter should be referred back to the Standards Committee, or
- (d) that it should be referred to the President of the Adjudication Panel for adjudication by a Case Tribunal.

In assessing these powers, it is important to remember that they are only concerned with misconduct - not with fraud or corruption.

(c) **ADJUDICATION PANEL**

The Adjudication Panel for England is constituted separately from the Standards Board. It will establish case tribunals to consider matters referred to it by the Ethical Standards Officers. The person subject to the adjudication may appear or be represented before the case tribunal. Where that tribunal finds misconduct, it may suspend a member (up to one year, although this must not extend beyond the person's term of office), disqualify from present or future membership (up to five years) or take no disciplinary action. There is a right of appeal to the High Court.

(2) **DISTRICT AUDITOR**

Section 91 of the Local Government Act 2000 introduces a system of advisory notices. Advisory notices will apply to all bodies subject to audit under the Audit Commission Act 1998.

The advisory notice gives auditors time to seek the opinion of the Courts on the legality of an Authority's actions where they consider that the Authority or a committee is contemplating a decision or course of action that would result in unlawful expenditure or other financial loss. This section gives the auditor power to issue an 'advisory notice' in such circumstances, and specifies the form of the notice and how it should be served on the Authority concerned.

An Authority in receipt of a notice must first consider it. If it then decides that it wants to proceed with the action specified in the notice, this section requires the Authority to provide the auditor with written notice of their intentions. Furthermore, it prevents the Authority from proceeding with the activity for a period (of up to 21 days) specified by the auditor in the advisory notice. During this period, the auditor may then choose to seek an opinion from the Court on the legality of the proposed course of action. The Authority may then only proceed with the action if the Court decides that it is lawful or if the auditor does not seek a Court's opinion within the notice period.

Four extraordinary headings of expenditure which could arise from decisions of the Planning Committee are:

- (a) an ombudsman finding of maladministration and injustice giving rise to recommendations for remedial action and financial recompense;
- (b) costs of litigation and award of costs following an application for Judicial Review in the High Court;

- (c) costs of local public inquiries, including possible award of applicants' costs following use of Secretary of State's call in powers;
- (d) costs of local public inquiries together with landowner's costs and possibly substantial compensation payments following actions by the Secretary of State for revocation, modification or discontinuance.

(3) **LOCAL GOVERNMENT OMBUDSMAN**

Aggrieved individuals who consider that they have been unfairly treated by the Council may refer their complaint to the Local Ombudsman for investigation to see if they have suffered injustice caused by maladministration.

Examples of maladministration would include:-

- (a) failure to follow a Council's agreed policies, rules or procedure;
- (b) failure to have proper procedures; bias or unfair discrimination;
- (c) failure to give due weight to Officer's recommendations and National Policy coupled with a failure to give and record clear and convincing planning reasons for approving a planning application where a planning application for substantially the same development has previously been refused;
- (d) taking into account irrelevant matters, allowing them to outweigh important planning considerations and failing to take fully into account Government guidance on personal circumstances.

If, after investigation, it is found that injustice has been caused by maladministration, the Ombudsman's report will contain recommendations as to what action the Council ought to take, which may include the payment of compensation.

The powers of the Local Government Ombudsman are contained in the Local Government Act 1974, as amended.

(4) **JUDICIAL REVIEW**

If an aggrieved individual or group of individuals believe that the Council's planning decision is wrong in law, they can make application to the High Court for Judicial Review of the decision, which might result in the planning decision being quashed.

In considering an application for Judicial Review the Court has regard to the following factors:-

- (a) whether the Council determined the planning application in accordance with the Development Plan or other material considerations;
- (b) whether the Council has taken into account an irrelevant consideration;
- (c) whether the Council has failed to take into account a relevant consideration;
- (d) whether there is evidence to suggest that if the Council has taken into account all relevant considerations it could not reasonably have taken the decision it arrived at;

- (e) whether all required procedures had been followed or there had been any procedural unfairness.

If the claimant succeeds on an application for Judicial Review, the planning decision may be quashed. In such circumstances it would be normal for the costs of the claimant's action to be awarded against the Council.

(5) **THE “CALL IN” POWERS TO THE SECRETARY OF STATE**

The Secretary of State has call in powers which can be exercised where a Council appears to be making inconsistent decisions which are seriously in conflict with National and Development Plan Policy. Planning applications called in by the Secretary of State, usually require a local public inquiry to be held, a part of the costs of which may be incurred by the Local Planning Authority. This power is contained in Section 77 of the Town & Country Planning Act 1990, as amended.

(6) **THE POWERS OF THE SECRETARY OF STATE TO REVOKE OR MODIFY A PLANNING PERMISSION**

Where planning permission has already been granted by the Council, the Secretary of State has powers to revoke or modify planning permission, or to require a discontinuance of a land use. This power is used if the original decision is judged to be grossly wrong. Cases giving rise to intervention include those where some important wider planning objective is at stake, such as protection of fine countryside.

Cases involving revocation and modification almost invariably require a local public inquiry before the Secretary of State's decision is confirmed. In addition to costs falling on the Council for the inquiry, where a planning permission is revoked or modified, there would be a liability for compensation to those with an interest in the land to be paid by the Local Authority.

APPENDIX 3**DRAFT LETTER FOR LOBBYISTS**

Dear Sir/Madam

The Role of a Councillor in a Planning Application

Thank you for seeking my advice as a Borough Councillor on a planning application. I will do all that I can to see that the matter is dealt with as fairly and as quickly as possible. My role as a Councillor is to listen and assist you and others through the planning process. The process is complex and involves consulting a number of different people. The views of various people will not always coincide.

The Council has adopted policies on most planning matters and it is important that applications are dealt with firmly in accordance with those policies so that decisions are consistent throughout the Borough.

A large number of applications are dealt with directly by Planning Officers under powers delegated to them. Other applications are dealt with by Planning Committee. If I am a member of the appropriate Committee I will have a vote on this application. If not, I may be able to attend the Committee if the application is within my Ward, but not vote. It is not possible for me to provide any commitment or support for an application or objection until I have heard all the facts presented at Committee. I may also be approached by others who will take a different point of view to you and I will therefore need to weigh up all the conflicting considerations.

Any views that you have on an application should be sent directly to the Council's Director Regeneration and Planning and any correspondence or information that I have received will also be passed on to the appropriate officer.

I am required by the Council's Code of Practice not to lobby or attempt to influence Planning Officers or fellow Councillors. I therefore cannot act as an advocate or agent on your behalf.

If I am a Member of the appropriate Planning Committee I may refer you to another Councillor who will help you make out your case.

If I am involved in making a decision on an application I cannot accept any gifts or hospitality from you or be seen to meet you or to meet you on or off site or otherwise give the impression of influence or bias.

I hope this clarifies my role as Councillor in the planning process.

APPENDIX 4: SCHEME OF DELEGATION**Development Control Scheme of Delegation**

As of May 2002 Hartlepool Borough Council has operated revised arrangements for dealing with planning applications.

The new arrangements have been introduced with a view to increasing the number of applications dealt with by Officers in accordance with Government guidelines and targets.

Planning Committee	
Membership:	16
Quorum:	7
FUNCTIONS	DELEGATIONS
1. All functions relating to town and country planning and development control (as set out in Part A of Schedule 1 to the Regulations).	<i>Director of Regeneration and Planning</i> 1. Power to carry out all of the functions of the Committee in paragraphs 1-5 adjacent, subject to the following exceptions:
2. Powers relating to the protection of important hedgerows (as set out in Part I of Schedule 1 to the Regulations).	i) in the case of any relevant application which is submitted to the Council for determination, any matter which any member requests should be referred to the Committee for decision, such request to be received in writing within 21 days of publication of details of the application,
3. Powers relating to the preservation of trees (as set out in Part I, Schedule 1 to the regulations).	ii) any matter which falls significantly outside of established policy guidelines or which would otherwise be likely to be controversial,
4. The obtaining of information under Section 330 of the Town and Country Planning Act 1990 as to interests in land.*	iii) the determination of applications submitted by the Council in respect of its own land or proposed development, except those relating to operational development to which there is no lodged objection,

Planning Committee (continued)	
Function	Delegation
<p>5. The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.*</p>	<p>iv) the refusal of an application except with the agreement of the Chair of the Committee.</p>
	<p>v) except in cases of urgency</p> <ul style="list-style-type: none"> a) power to require the discontinuance of a use of land b) power to serve a stop notice c) power to issue an enforcement notice d) power to apply for an injunction restraining a breach of planning control e) power to require proper maintenance of land f) power to serve a building preservation notice and related powers g) power to issue enforcement notice in relation to demolition of unlisted building in conservation area h) powers to acquire a listed building in need of repair and to serve a repairs notice i) power to apply for an injunction in relation to a listed building, <p>exercise of such powers to be reported for information to the next available meeting of the Committee.</p> <p>2. Power to formulate decision notices following decisions made in principle by the Committee.</p>

Planning Committee (continued)	
Function	Delegation
<p>6. Powers, related to Commons Registration as set out in part B of Schedule 1 to the Regulations. [1B.37 & 38]</p>	
<p>7 Functions relating to public rights of way (as set out in Part 1 of Part I of Schedule 1 to the 2001 Regulations).</p>	<p><i>Director of Neighbourhood Services</i></p> <ol style="list-style-type: none"> 1. Power to negotiate and set charges for diversion or related matters and to take action regarding blockages or Rights of Way issues other than those related to countryside management. 2. Power in cases of urgency to carry out all of the functions of the Planning Committee relating to public rights of way (other than those delegated to the Director of Community Services), following discussion of the issues with the Chair of the Committee.
	<ol style="list-style-type: none"> 1. In relation to matters which are relevant to countryside management, power to negotiate and set charges for diversion or related matters and to take action regarding blockage on Rights of Way issues. 2. Power in cases of urgency to carry out all of the functions of the Planning Committee relating to public rights of way which are relevant to countryside management.

Planning Committee (continued)	
Function	Delegation
	<p><i>Chief Solicitor</i></p> <ol style="list-style-type: none"> 1. Power to confirm without modification unopposed creation, diversion or extinguishment Orders in respect of Public Rights of Way, following the statutory advertising period. 2. Power to confirm, without modification, unopposed footpath and footway conversion orders following the statutory advertising period. 3. Power to confirm, without modification, all future unopposed Definitive Map Modification Orders following the statutory advertising period.
<p>8 The licensing and registration functions set out in Part B of Schedule 1 to the regulations at points 41 and 47-55 relating to the New Roads and Street Works Act 1991 and the Highways Act 1980.</p>	<p><i>Director of Neighbourhood Services</i></p> <p>Power to carry out all of the functions of the Committee with the exception of any matter which falls significantly outside of established policy guidelines or which would otherwise be likely to be controversial.</p>
<p>*This may also arise in connection with the responsibility of the Executive and will be exercised accordingly.</p>	