

# PLANNING COMMITTEE AGENDA



**Friday, 29 May 2009**

**at 10.00 am**

**in Committee Room B  
Civic Centre, Hartlepool**

## MEMBERS OF PLANNING COMMITTEE:

Councillors S Akers-Belcher, Allison, R Cook, S Cook, Fleet, Flintoff, Kaiser, Laffey, G Lilley, Morris, Payne, Plant, Richardson, Simmons, Sutheran and Wright

### 1. **APOLOGIES FOR ABSENCE**

### 2. **TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**

### 3. **MINUTES**

None.

### 4. **ITEMS REQUIRING DECISION**

4.1 Planning Applications – *Assistant Director (Planning and Economic Development)*

- |    |             |   |
|----|-------------|---|
| 1. | H/2009/0198 | St Hilds C Of E School ,King Oswy Drive, Hartlepool |
| 2. | H/2009/0028 | Able Uk Ltd, Tees Road Hartlepool                   |

4.2 Planning Code of Practice – *Chief Solicitor*

### 5. **ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

### 6. **FOR INFORMATION**

Next Scheduled Meeting – Wednesday 17 June 2009 in the Civic Centre at 10.00 am.

Site Visits – Any site visits requested by the Committee at this meeting will take place immediately prior to the next Planning Committee meeting on the morning of Wednesday, 17 June 2009 at 9.00am

**No:** 1  
**Number:** H/2009/0198  
**Applicant:** Headland Development Trust  
**Agent:** SJD Architects Ltd Hampdon House Falcon Court  
 Westland Way Preston Farm Business Park Stockton on  
 Tees TS18 3TS  
**Date valid:** 28/04/2009  
**Development:** Erection of a new performing arts centre with associated  
 car parking and landscaping (amended application)  
**Location:** ST HILDS C OF E SCHOOL KING OSWY DRIVE  
 HARTLEPOOL HARTLEPOOL

---

## Background

1.1 This application is similar to an application which was refused by members at the April Committee (H/2009/0102). The application was refused for the following reasons:

- 1 It is considered that the proposed development would by reason of its size and siting appear unduly large and dominant to the detriment of the visual amenities of the occupiers of houses on Tempest Road and King Oswy Drive, which adjoin the application site, contrary to Policies PU9 and GEP1 of the Hartlepool Local Plan 2006.
- 2 It is considered that in an area which has been subject to criminal and anti-social behaviour that insufficient consideration has been given to measures to proclude such activity to the detriment of the wellbeing of the occupiers of nearby houses by engendering fears of crime and anti social behaviour contrary to Policy GEP3 of the Hartlepool Local Plan 2006.

1.2 The applicant has submitted an amended application which seeks to address the concerns which led to the refusal of the application. The main changes are that the building has been re-sited some 2.5m further to the east i.e. further away from the residential properties. (This means that the site now takes in an additional area of the school car park). It has also been set down 0.5m further on the site. In addition fencing has been increased to 3m and Hawthorn hedging is proposed in critical areas. In terms of security this is in addition to the CCTV scheme which was previously proposed.

## The Application and Site

1.3 The site to which the application relates is land adjacent to and within St Hild's C of E School on King Oswy Drive. It incorporates a grassed area and part of the existing car park of St Hilds. The site is bounded to the west by residential properties which front onto Tempest Road, to the south by playing fields, to the east by car parking associated with the school and to the north by King Oswy Drive.

1.4 The application seeks consent for the erection of a new performing arts centre (New Life Centre) with associated car parking within the site for 45 vehicles, 3 of

which will be allocated for people with disabilities. The New Life Centre would comprise a two storey building for use by the local communities. The building would comprise the following:

- An information Computer Technology (ICT) suite;
- Drama and dance studios
- Café and social facilities
- Media and TV studio
- An entrance gateway and landscaped areas from King Owsy Drive

1.5 The building has a broadly L-shape design incorporating a mixture of one and two storeys. The focal point of the building will be the entrance which will be predominantly glazed. The proposed building will be constructed using materials which will give the building a modern appearance (aluminium, brick, timber and render). Also proposed is a biomass generator, which provides a more environmentally friendly heating option and a bin store.

1.6 The site at present is currently laid to grass. However it was previously in part the site of a sports hall as part of the Henry Smith secondary school. There is currently a steel container and a micro wind turbine on site. These structures were erected as part of the St Hild's school's eco-project for which planning permission was recently granted (H/2008/0382). Clearly if the development proceeds this project will have to be relocated.

1.7 Along with the associated plans and elevations this application has been accompanied by a Design and Access Statement, Transport Assessment incorporating a Travel Plan Statement, a Planning Policy Statement and a copy of a Sustainability Assessment. Plans will be displayed at the meeting.

## **Publicity**

1.8 The application has been advertised by way of neighbour letters (23), site notice and press advert. At the time of writing five letters of objection were received four of these writers object to the siting of the building rather than the project in principle. Forty one letters of support and two letters of no objection were also received.

Those objecting raise the following concerns:

1. Don't object to the project but the proposed site.
2. Wrong site. Too close to neighbours.
3. Won't be able to sit in garden.
4. Scandal you have already made your mind up.
5. Impact on elderly residents.
6. Dust.Loss of light.
7. It will provide an area for young people to congregate as sports hall did.
8. Sports hall attracted crime and antisocial behaviour.
9. Loss of trees.
10. Comparisons to Brierton Sports Centre inappropriate this is not as close to 11. neighbours.
12. Lack of car parking would lead to congestion.

13. Should be nearer the Headland.
14. The building should be across the road where it would be far away from nearby houses, have room to expand and could have its own car park.

Those supporting the proposal raise the following points:

1. Great investment. Funding available. Headland Development Trust is to be congratulated. World class building with best state of the art equipment.
2. Beneficial for town which needs facilities like this which will make a huge difference to the town and improve quality of life. How can we miss this once in a lifetime opportunity?
3. Jobs will be created.
4. Fantastic Opportunity for young people and the community to develop their talent and learn new skills.
5. Nothing like this in the north of England.
6. Antisocial behaviour issues exaggerated. More problems without diversions offered by centre. Since school has occupied new school buildings remarkable decrease in instances of intrusion, vandalism and damage. The performing arts centre has state of the art security surveillance.
7. Lack of facilities for young people.
8. Partnership with the school will enhance educational opportunities for children and young people in structured activities after school hours.
9. Brierton Centre has been successful helped community and not attracted yobbish behaviour
10. Wrong decision made previously hope common sense will prevail.

Copy letters **B**

The period for publicity expires on 20<sup>th</sup> May 2009.

### **Consultations**

1.9 The following consultation replies have been received:

**Head of Public Protection** – Comments awaited.

**Head of Property Services** : No comments.

**Northumbrian Water** – No objections

**Engineering Consultancy** – Comments awaited.

**Community Services** – Comments awaited.

**Neighbourhood Services** – Comments awaited.

**Sport England** – No objections.

**Clerk to the Headland Parish Council** – Comments awaited.

**Traffic & Transportation:** The applicant has increased the provision which will help to reduce the possibility of overflow of the car park. The applicant has shown 2 disabled parking bays, giving the number of parking spaces proposed there should be at least 3 disabled parking bays. Parking bays 5 and 6 are shown to be disabled bays however they are not set out in accordance with BS8300:2000. There should be 6 metres aisle width from the end of the safety zone of the disabled parking bays and other parking bays. The disabled parking bays need to be set back to achieve the 6 metres aisle width.

The applicant has shown the swept path for a refuse vehicle. It appears to be very tight and infringes on the landscaping area within the school. Slight alterations may be required to the landscaping area to avoid this.

Further details on how the refuse from the development is to be collected are required. The parking restrictions as requested on the previous applications still apply to this application

**Cleveland Police -** The proposed development is located in the Brus Ward of Hartlepool which suffers higher than average rates of crime and disorder. The typical security issues which for these types of developments are theft and criminal damage during construction, burglary of the premises, criminal damage to the premises, theft and theft from visitors and staff vehicles and anti social behaviour. I would recommend that these security issues are taken into account with regard design and management of the development. I would recommend that this development complies with the principles of Secured by Design which will help reduce incidents of crime and disorder if the following recommendations are implemented there is no reason why this development should not reach Secured by Design accreditation.

Although this development is located in the Brus Ward which suffers higher than average rates of crime and disorder a crime analysis on Police data for location of St. Hilda for the period of 01/05/08 to 01/05/09 revealed only two incidents reported to Police 1 theft of phone from school. 2. Criminal damage refuse bin set on fire males arrested as a result of CCTV in area and received reprimand. Good management of the development is essential to prevent misuse of the facility Good access control to the building is the matrix to security whilst the facility is open. Access and use to the grounds of the development should be regularly monitored to prevent any misuse. The fact that the facility will be open on an evening along with good management should reduce any risk of crime and disorder at this facility. Makes various recommendations in relation to boundary treatments, entrances, car parking and cycle storage, landscaping, CCTV, lighting, building layout, windows, doors, bin store, school entrance/reception, secure areas, alarms and property marking.

**Children's Services:** Children's Services Department confirm unequivocal support for what the proposers of the Life Centre are trying to achieve. The Life Centre would be a town wide facility for young people, providing opportunities for recreation and personal development. Our Department does not wish to comment on the particular detail of location.

## Planning Policy

1.10 The following policies in the adopted Hartlepool Local Plan 2006 are relevant to the determination of this application:

GEP1: States that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account including appearance and relationship with surroundings, effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping and native species.

GEP2: States that provision will be required to enable access for all (in particular for people with disabilities, the elderly and people with children) in new developments where there is public access, places of employment, public transport and car parking schemes and where practical in alterations to existing developments.

GEP3: States that in considering applications, regard will be given to the need for the design and layout to incorporate measures to reduce crime and the fear of crime.

Tra1: Sets out the measures that will be taken to improve the passage of buses and the comfort of passengers along the north-south bus priority route. Other bus priority routes will be identified.

### **Planning Considerations**

1.11 The main planning considerations are again considered to be policy, design/siting/appearance, impact on the amenity of the neighbouring properties, highways, trees and crime & disorder.

1.12 The time period for publicity expires shortly and a number of consultation responses are outstanding. However there is an urgency to resolve this matter as the scheme is subject to a grant application.

1.13 The applicant has amended the layout and provided further information to address the concerns of Traffic & Transportation in relation to swept paths, the layout of disabled parking areas and refuse arrangements and the further comments of Traffic & Transportation are awaited.

1.14 In light of the outstanding consultation responses and the fact that the time period for representations has not expired an update report will follow.

**RECOMMENDATION – UPDATE to follow**

## St Hild's School



THIS PLAN IS FOR SITE IDENTIFICATION PURPOSE ONLY

COPYRIGHT RESERVED LICENCE 1000233902008

### **HARTLEPOOL BOROUGH COUNCIL**

Department of Regeneration and planning

Bryan Hanson House, Hanson Square, Hartlepool, TS24 7BT

**Scale: 1:2000**

**Date : 18/05/2009**

**Drg No: H/2009/0198**

**Drawn: JT**

**No:** 2  
**Number:** H/2009/0028  
**Applicant:** Mr Stephen Boland Billingham Reach Industrial Estate  
Billingham TS23 1PX  
**Agent:** Able UK Ltd. Mr Richard Cram Able House Billingham  
Reach Industrial Estate Billingham TS23 1PX  
**Date valid:** 22/01/2009  
**Development:** Mooring of a tanker ship in dry dock to store and test  
ballast water and rain water pumped from the dock, water  
to be discharged/pumped as appropriate  
**Location:** ABLE UK LTD TEES ROAD HARTLEPOOL  
HARTLEPOOL

---

### The Application and Site

2.1 The application site is part of the Able UK Port Facility, known as TERRC. The proposed development comprises the mooring of a tanker ship in the dry dock; the ship would be fitted with a number of individual tanks for the storage of liquids. It is proposed that surface water runoff from the dry dock and from the Dirty Dismantling Pad (DPP) will be pumped onto the ship and directed into the storage tanks after passing through a full retention separator. The surface water run off is classified by the Environment Agency as trade effluent and will be discharged from the storage tanks in accordance with a relevant discharge consent, either to Seaton Channel (if uncontaminated) or for treatment offsite if necessary.

2.2 The application site received planning consent under application H/2007/0543 for the construction of 2 holding tanks in connection with the drainage design for the TERRC site. It is proposed to use the ship (with required tanks) instead of the existing tanks on the site for the discharge of trade effluent as the area where the existing tanks are constructed is required by Able for other operations associated with the site.

### Publicity

2.3 The application has been advertised by way of site notice and press notice and a neighbour notification. To date, there has been 16 letters of objection, however only two of these gave reasons for the objection.

1. a tanker moored in the dock would not be a safe alternative to the previously approved system, as a build up of contaminated sludge would gather in the bottom of the tanker which would be hard to analyse and dangerous to remove.
2. the only answer is to have purpose built tanks designed to be easily tested and capable of having sludge removed without putting workers lives at risk.
3. concerned that Able UK are seeking to make a major change to the development.



4. concerns regarding the lack of information in the application, such as a flood risk assessment, contamination assessment and environmental assessment/statement.
5. it is not clear how the proposal will work.
6. there is no reference to variation of a Waste Management Licence which would be needed.
7. Able UK will need to provide information about the ballast water capacity of the contaminated ships and the storage capacity of the proposed tanker which will hold the water.
8. concerns that if Able UK do not get the system for testing and discharge of contaminated water right there is a risk that water may flow into the Seaton Channel.

2.4 Further information including a flood risk assessment was submitted and further publicity was carried out in the form of a press notice, site notice, neighbour notification and letters to objectors to advertise the new information.

No responses have been received to date regarding the new information.

The period for publicity for the new information expires on the day of the Planning Committee.

Copy letters A

## Consultations

2.5 The following consultation replies have been received, taking into account the additional information:

|   |   |
|---|---|
| <b>Public Protection</b>                      | No objection  |
| <b>Traffic and Transportation</b>             | There are no major highway implications with this application |
| <b>Northumbrian Water</b>                     | No objection  |
| <b>Engineering Consultancy</b>                | Verbally no objection   |
| <b>Health and Safety Executive</b>            | Do not advise against the grant of planning permission        |
| <b>HSE Nuclear Installations Inspectorate</b> | Comments awaited  |
| <b>Environment Agency</b>                     | No objection subject to a condition                           |
| <b>Natural England</b>                        | No objection  |

## Planning Policy

2.6 The following policies in the adopted Hartlepool Local Plan 2006 are relevant to the determination of this application:

GEP1: States that in determining planning applications the Borough Council will have due regard to the provisions of the Development Plan. Development should be located on previously developed land within the limits to development and outside the green wedges. The policy also highlights the wide range of matters which will be taken into account including appearance and relationship with surroundings,

effects on amenity, highway safety, car parking, infrastructure, flood risk, trees, landscape features, wildlife and habitats, the historic environment, and the need for high standards of design and landscaping and native species.

GEP3: States that in considering applications, regard will be given to the need for the design and layout to incorporate measures to reduce crime and the fear of crime.

GEP4: States that development proposals will not be approved which would have a significant detrimental effect on the environment, on amenities of local residents, watercourses, wetlands, coastal waters, the aquifer or the water supply system or that would affect air quality or would constrain the development of neighbouring land.

Ind5: States that business uses and warehousing will be permitted in this area. General industry will only be approved in certain circumstances. A particularly high quality of design and landscaping will be required for development fronting the main approach roads and estate roads.

WL1: States that development likely to have a significant adverse effect on an international nature conservation site will be subject to the most rigorous examination and will be refused unless there is no alternative solution or there are imperative reasons of over-riding public interest for the development. Where development is permitted, the use of planning conditions or obligations will be considered to avoid and minimise harm to the site, to enhance its interest and to secure any necessary compensatory measures.

## **Planning Considerations**

2.7 The main planning considerations in this instance are the appropriateness of the proposal in terms of the policies and proposals contained within the adopted Hartlepool Local Plan outlined above and in particular the impact of the proposals upon the area in general, in terms of appearance. Drainage implications and affect on the area need to be considered also.

### **Appearance**

2.8 Although the proposal to use a ship as part of the drainage detail for the site is unusual it is not considered in terms of appearance that the proposed structure would be out of keeping with the surrounding area given the use of the TERRC facility.

### **Regulatory Systems**

2.9 The proposal is subject to a number of regulatory systems separate from planning which the applicant has outlined and are detailed in Appendix 1. These show the levels of control that will apply to this proposal. Scott Wilson, the Council's consultant on the TERRC site are happy with this information.

### **Operational requirements**

2.10 Able have provided details of how the proposal will operate. As the proposal is unusual it is considered beneficial for Members to know how this operates, therefore a summary is provided in Appendix 2. Scott Wilson, the Council's consultant on the TERRC site are again happy with this information.

2.11 A Flood Risk Assessment and supporting documentation has been submitted to support the application this has been assessed by the relevant consultation bodies and considered sufficient to form a view regarding the application.

2.12 It is considered that an Environmental Impact Assessment/Statement is not required to accompany this application. The views of Scott Wilson have been specifically sought on this issue. They point out that while the proposal falls within Schedule 2 development EIA is only required if there are likely to be significant effects on the environment due to the development's nature, size or location. It is considered that proposal to use a ship's tanks instead of land based tanks does not introduce any new potential impacts on the SSSI/SPA or any other environmental receptors. Natural England have indicated that they consider the location and nature of the proposed development will not be likely to have a significant effect on the interest features of the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site, nor be likely to cause damage or disturbance to the Seal Sands SSSI.

2.13 The Council's Ecologist has confirmed that there should be no ecological issues associated with this application other than the potential for contaminated water to be discharged into Seaton Channel. However this will be controlled via the Environment Agency under the appropriate Discharge Consent. The Environment Agency and Natural England have no objection to the proposal. As detailed in Appendix 1 there are a number of controls which the scheme would need to adhere to.

2.14 In terms of highway safety, the Traffic and Transportation team have confirmed that there are no major highway implications associated with this application, there is no proposal to alter the car parking arrangements on the site.

## **Conclusion**

2.15 Having regard to the policies identified in the Hartlepool Local Plan 2006 above and in particular consideration of the effects of the development on the amenity of area in terms of outlook and its appearance the development is considered broadly satisfactory. However as a consultation response is awaited and publicity is outstanding an update report will follow.

**RECOMMENDATION** – Update to follow

## APPENDIX 1 – Regulatory System

### **In Class Registration**

All vessels have to register at a port/country and have to be maintained in a seaworthy condition. The international governing authority (IMO) of each country has dictated that vessels must undergo quadrennial surveys with annual inspections, in order that the necessary certificates of compliance (e.g. radio, safety, manning etc) can be issued. Registration is provided by Lloyds of London, or equivalent.

### **Load Line Exemption Certificate**

In the absence of “Registration in Class” the vessel could achieve acceptability by virtue of a Load Line Exemption Certificate. This is a one-off certification carried out by a qualified naval surveyor employed by an insurance company for this purpose. The surveyor dictates the duration of the certification. The Load Line Exemption Certification is regulated by the Maritime and Coastguards Agency.

### **Waste Management Licence**

Potentially contaminated surface run-off water taken untreated from the floor of the TERRC dock, for temporary holdings within a vessel, will be regarded legally as a waste. The use of a vessel for this purpose will therefore be subject to the Waste Regulations. This will require a “Working Plan” to be submitted to the Environment Agency, approved by the Agency and implemented in full, consistently, by the Licensee. The Agency will monitor compliance.

### **Consent to Discharge**

Having stored surface run off water in the vessel the intention will be to discharge the water into the Seaton Channel with, if necessary treatment to ensure it is fit to do so. Permission to discharge would be sought from the Environment Agency who would consider any such application under their powers granted by the Water Resources Act 1991, and amended by the Environment Act 1995. If minded to grant consent to discharge, the Agency will specify conditions relating to the quality of the water and its rate of discharge. The Agency would monitor compliance, and have powers of enforcement.

### **Other Regulatory Regimes**

As with all such operations compliance with the Health and Safety at Work Act will be required with performance monitored by HSE.

Finally, should the activities be considered to constitute a “nuisance” in terms of dust, colour, fumes, smoke, noise etc the issue would be investigated by the Environmental Health Officer of Hartlepool Borough Council who would apply regulation under the Environmental Protection Act 1991.

## APPENDIX 2 – Operational Requirements

The proposed development comprises the mooring of a tanker ship in the dry dock, the ship would be fitted with a number of individual tanks for the storage of fluids. It is proposed that surface water runoff from the dry dock and from the Dirty Dismantling Pad will be pumped onto the ship and directed into the storage tanks after passing through a full retention separator.

A fabric liner filter arrangement which is installed to minimise the sediments flowing into the dock sump for pumping. This fabric filter arrangement will be checked daily to confirm that flow into the sump is effective. Should the liner indicate it is becoming “blinded” or blocked then the defective section will be repaired/replaced in a planned manner to restore the effectiveness of the filter and the old removed fabric will be disposed of to a suitably licensed facility.

Surface water run-off from the dry dock is to be pumped into the tanker ship for testing. A control panel will be mounted on the quay adjacent to the pump. The pump shall have a fixed pumping rate of 40 litres per second.

Surface water run-off from the concrete dismantling pad is to be pumped into the tanker ship after having passed through an interceptor. A control panel will be mounted at surface level adjacent to the pump. There will be a primary pump and standby pump each with a fixed pumping rate of 50 litres per second. The standby pump will be set to start automatically in the event of a primary pump failure.

Pumps are to be float operated at source, the control box will allow remote manual switch off.

The tanks will be visually inspected each day and the water storage level recorded in a site diary. The inspection shall be undertaken at 17:00 hrs or thereabouts by the Site Manager or other person appointed by him.

As a precautionary measure during the daily tank checks the surface of the liquid will be inspected for the presence of oil although the interceptor should remove all hydrocarbon contamination before it enters the tanks. Spill kits will be on hand if oil is visibly present on the surface. Spill kits shall be applied to the tank and then removed into sealed containers for disposal at a suitable licensed facility.

Should oil be found on the surface of the liquid in the tanks an inspection of the interceptor will be undertaken and appropriate maintenance carried out.

When the tanks are close to capacity inspections shall be increased as required during rainfall events. Outside of normal working hours supplementary inspections during rainfall events will be undertaken by the 24 hour site security team as instructed by the Site Manager. The security team will be trained to switch the discharge pipes between tanks and re-start the pumps. They will also be provided with the 24 hour contact numbers of Able site management.

A float switch will be positioned in each tank, and will automatically cut off the pump once the water level in the tank reaches its design depth.

If both tanks are full to capacity, then the flow into the interceptor is to be isolated; the pump is manually switched off; dismantling activities on the DDP shall cease. Surface water within the DDP shall be removed when necessary to ensure capacity of the DDP is not exceeded.

Each tank will contain an alarm system that will provide a visual alert when the tanks are at their design capacity

As soon as possible after the visual alarm had been activated:

- The outfall from the interceptor will be maneuvered into the adjacent empty tank and the pump will be re-started from its control panel
- When any rainfall has ceased the pump will be manually switched off and the rising main from the pump will be maneuvered into the empty tank. The pump will then be switched on again.

If both tanks are full and the dry dock sump is full, dismantling activities in the dry dock will be temporarily suspended and will not re-commence until a tank has been emptied and the pumps have been re-started.

When a tank is full, a water sample shall be taken and sent to an independent laboratory for analysis.

On receipt of the test results, the Compliance Manager shall review the test data and give written instruction to the Site Manager regarding the method of disposal of the surface water run-off. This instruction may be communicated by e-mail. Records of analysis and instructions shall be maintained by the Compliance Manager. Immediately prior to discharge of the tank(s) the liquids in the tanks will be checked by the Site Manager for the presence of surface oil and if present it shall be removed by spill kit into sealed containers for disposal to a suitably licensed facility. When the surface oil is removed, the Site Manager will proceed to discharge the tank as below.

When the Compliance Manager authorises disposal directly to Seaton Channel, the valves controlling flow from the tank that has been tested shall be switched on during a falling tide and shall be switched on until the tank is empty. The flow rate from the tank shall be controlled in line with the discharge consent.

When the tank is empty it shall be closed and the tank will be visually inspected for any defect. The depth of any solids that have settled out of suspension and are evident on the bed of the tank shall be recorded but will remain in-situ. A record of the inspection shall be maintained by the Compliance Manager.

A weir is located around the pumps. Where the depth of sediment present on the bed of the tank exceeds half the depth of the weir, arrangements shall be made by the Compliance Manager for the effective collection, storage, testing and safe disposal of the sediment.

The sediments will be collected from the base of the holding tank and deposited into a suitable drum/container. The drum/container once filled will be stored on an impermeable surface or the DDP until test results categorise the waste for disposal. Records for disposal of sediment analysis will be maintained by the Compliance Manager.

Once the tank has been inspected and, when necessary the sediments removed, it can be put back into service and filled with surface water run-off as described above.

ABLE UK



THIS PLAN IS FOR SITE IDENTIFICATION PURPOSE ONLY

COPYRIGHT RESERVED LICENCE 1000233902008

**HARTLEPOOL BOROUGH COUNCIL**

Department of Regeneration and planning

Bryan Hanson House, Hanson Square, Hartlepool, TS24 7BT

**Scale: 1:10,000**

**Date : 18/05/2009**

**Drg No: H/2009/0028**

**Drawn: JT**



## UPDATE REPORT

**No:** 1  
**Number:** H/2009/0198  
**Applicant:** Headland Development Trust  
**Agent:** SJD Architects Ltd Hampdon House Falcon Court  
 Westland Way Preston Farm Business Park Stockton on  
 Tees TS18 3TS  
**Date valid:** 28/04/2009  
**Development:** Erection of a new performing arts centre with associated  
 car parking and landscaping (amended application)  
**Location:** ST HILDS C OF E SCHOOL KING OSWY DRIVE  
 HARTLEPOOL HARTLEPOOL

---

### UPDATE

1.1 This application appears on the main agenda at item 1.

1.2 The recommendation was left open as the time period for representations had not expired and a number of consultation responses were outstanding.

### ADDITIONAL REPRESENTATIONS

1.3 A further 16 letters of support and 34 letters of objection have been received. Where writers have made comments these responses will be made available in the Members room.

1.4 Those supporting the proposal raise the following issues:

- 1 Facility will give unemployed/disenfranchised young people a place to focus and harness their creative ability and develop their skills.
- 2 It will assist in managing and occupying youths and therefore will have a positive and preventative influence.
- 3 Many young people will benefit
- 4 Young people are often demonised they should be given opportunities and invested in.
- 5 Very negative to assume centre will cause any problems for residents.
- 6 Huge benefits for town in terms of jobs created and money spent locally
- 7 Lets sort out differences and concerns of the local people and let common sense prevail
- 8 Stockton has better facilities for young people
- 9 Town needs a facility like this

1.5 Those objecting to the proposal raise the following issues:

- 1 Overshadowing
- 2 Massing, size & scale of building.
- 3 Proximity to dwellings.
- 4 Noise pollution 7 days a week.

## UPDATE REPORT

- 5 Intrusion on quality of life.
- 6 Antisocial behaviour nooks and cranny's could lead to anti social behaviour.
- 7 Other sites discounted on grounds of safety yet pupils negotiate roads unescorted to reach existing site. Staff would be building based and so not have to travel between the sites.
- 8 Right building wrong site.
- 9 If land test results unsatisfactory would have to be built elsewhere and school would work in partnership.
- 10 Applicant simply does not want building built anywhere else.
- 11 Unduly large for a narrow piece of land.

The time period for representations has expired.

### 1.6 ADDITIONAL CONSULTATION RESPONSES

Head Of Public Protection: No objections in principal to this application.

Serious concerns about the alcoves to the rear of the building and the area of land between the building and the neighbouring housing. In my opinion neither the alcoves or this area of land should be accessible to the students due to the close proximity to the rear gardens of the neighbouring residential properties and the potential nuisance that this will cause to the residents.

The Gillies biomass generator identified in the supporting information is an exempted appliance under the provisions of the Clean Air Act for use in a smoke control area. If an alternative biomass generator is to be used then it must be covered by a smoke control (exempted fireplace) order for use within a smoke control area.

The design and layout of the building will provide adequate protection from any noise breakout subject to the careful design of the ventilation system.

Engineering Consultancy : No objections but recommends condition covering ground investigations and remedial works where necessary.

Neighbourhood Services : No comments.

Adult & Community Services: Whilst it is unclear from the plans how people will access the grass pitches and MUGA (as you can only see access for grass cutting and ambulances on the drawings provided), there is no obvious encroachment onto the pitches - therefore I can see no reason to object to the application from a sporting perspective.

### PLANNING CONSIDERATIONS

1.7 The main planning considerations are considered to be policy, design/siting/appearance, impact on the amenity of the neighbouring properties, highways, trees and crime & antisocial behaviour.

## UPDATE REPORT

### POLICY

1.8 The site is located on part of an existing school site and it is considered that in principle such a community facility is acceptable in this location.

### DESIGN/SITING/APPEARANCE

1.9 The design proposed is a modern and bold design which will be constructed in a range of modern materials. The site is not within a Conservation Area, or in the vicinity of a listed building, and a state of the art modern building is considered appropriate in this location. The building will rise essentially to two storeys and its mass has been broken up into a series of smaller blocks connected together by a central building spine. The site is adjacent to the modern school building and relatively modern housing which also rises to two storeys and the scale of the buildings in this context is considered appropriate. The main pedestrian entrance will be toward the front of the site with car parking to the rear (south) to create a relatively active frontage onto King Oswy Drive which is considered appropriate. The site is relatively narrow and the building has been sited as far to the east as possible in order to achieve the maximum separation distances to the adjacent residential properties. It will stand adjacent to the car parking area of the main school, and will be set in its own landscaped grounds, and in this wider context it is not considered that it will appear unduly cramped. In terms of its design, siting and appearance the proposal is considered acceptable.

### IMPACT ON THE AMENITY OF NEIGHBOURING PROPERTIES

1.10 The site is bounded by a number of residential properties to the west, most of these properties face the site with their main rear elevation and a number of them have had small rear extensions or conservatories which also face the site. The exception is 17 King Oswy Drive which is gable ended onto the site. As this has a slightly different relationship with the site relevant aspects of the relationship of this property to the development will be discussed separately.

1.11 A number of objections have been received from the occupiers of the neighbouring properties and these are summarised in the main report and above. In terms of the impact of the development on their amenity the main concerns raised are loss of light, view, privacy, outlook, issues relating to over dominance, light pollution, noise and disturbance. Issues raised surrounding crime and disorder are discussed separately below, whilst members will be aware the loss of a view is not a material planning consideration.

1.12 In bringing forward the revised proposal in order to attempt to address the concerns of the neighbours the applicant has sited the building some 2.5m further eastwards and has set the building down a further 0.5m. As with the previous proposal in order to address concerns in relation to overlooking windows on the elevations facing the neighbours are limited incorporating oriel style windows and obscure glazing where necessary.

## UPDATE REPORT

1.13 The proposed building will rise to two storeys and at some 61m in overall length north to south has a substantial presence. However it is located on a school site where one should expect to find buildings of this scale. The applicant has sited the building as far as possible towards the eastern part of the site and the mass of the building, as it approaches the neighbours, has also been broken up into a series of smaller blocks connected together by a central building spine. The central building spine at 8.6m high is the highest part but will be located some 29 to 31m from the main rear elevations of the houses on Tempest Road opposite and some 21m from their garden boundaries. The two storey gables of the three smaller blocks which approach the houses on Tempest Road, are some 7.8m high, and are located some 22.5m, 19.3 m and 17.78m from the main rear elevations of these residential properties and some 13m, 13m and 11m from the garden boundaries respectively. The building has also been set down to the lower part of the site and in considering the height of the building and the relationship with the neighbours this should be born in mind. The setting down means that the finished floor height of the building will be 12.4m in contrasts the height of the ground at the western site boundary, adjacent to the neighbours gardens, ranges from 13.14m (17 King Oswy Drive) to 13.8m (13 Tempest Road). The building will therefore be set some 0.7m to 1.4m lower than the land at the neighbours boundary with the height differential increasing from north to south. Given the design and siting of the building, the proposed levels and the separation distances involved it is not considered that the development would unduly affect the amenity of the occupiers of the dwellings on Tempest Road in terms of loss of outlook or issues of overdominance.

1.14 In terms of loss of light there will be some loss of light to the neighbouring residential properties on Tempest Road particularly in the earlier parts of the day, and especially in winter, however again given the design and siting of the building, the levels and the separation distances involved it is not considered that the development would unduly affect these properties in terms of loss of light.

1.15 In terms of loss of privacy the windows in the elevation facing the residential properties to the west are limited. Ground floor windows facing the residential neighbours where proposed will be screened by existing or proposed endlosures. The only windows directly facing the residential properties serve corridors, are located some 21m from the neighbours garden boundary, and the applicant has agreed that in the case of first floor windows these will be obscure glazed. Elsewhere oriel style window which will face due north, and inner courtyard windows, are proposed which do not allow for any significant overlooking of the neighbouring properties.

1.16 In terms of 17 King Oswy Drive, whilst many of the above considerations apply this neighbour has a slightly different relationship to the site than the neighbours on Tempest Road as it faces the site with its gable. It is clear that when this property was originally built its main outlook would have been north/south. However the occupiers have in recent years extended and altered their property adding rear and side extensions. The resident also has a garage to the rear of the property on the side closest to the site. The side

## UPDATE REPORT

extension consists of a first floor extension with a blank gable with a car port below. The sides of the carport are open save for a grille with archways allowing limited light to, and views from, side windows set back in what would have been the original gable of house. These windows serve an inner lounge/dining area and a hall, whilst a kitchen window enjoys limited light/views between the extension and garage. Whilst the side windows provide useful additional light it is clear that views from, and light to, these windows are already severely restricted by the applicant's own side extension and garage. Given the physical relationship and the existing situation it is not considered that the proposed development would unduly affect this neighbour in terms of loss of light, outlook, privacy or in terms of any issues relating to overdominance.

1.17 Turning to the use of the development objections have also been raised that the development will cause noise and general disturbance to the nearby residents. The building will provide a community facility and is located on an existing school site which serves a similar community function, indeed it is intended that the school will also use the facility. The applicant has indicated that the facility will operate until 9.00pm and so the use will not extend to late in the evening. It is also the case that the entrance to the facility is located to the east side of the building/site away from the neighbouring residential properties. It is not considered therefore that any nearby residents will be unduly disturbed by comings and goings associated with the development. Concerns have been raised in relation to noise however the building has been designed with minimal openings facing the residential properties which would limit any potential for noise breakout and a condition requiring details of noise insulation and ventilation measures can be imposed. Concerns have also been raised in relation to the use of the landscaped buffer behind the building and the rear small squares. (This issue will be returned to below). The applicant has confirmed however that these areas will be fenced off and that there will be no general access to these areas beyond occasional access for maintenance and this can be conditioned. It is not considered therefore that the proper use of the facility will unduly affect the amenity of the occupiers of neighbouring properties.

### HIGHWAYS

1.18 Objections have been received in relation to the additional traffic and parking problems that the development might attract. The school site currently accommodates 102 parking spaces following development, through the provision of additional parking areas and the partial remodelling of the school car park, 122 spaces will be provided. It is understood that when the school is closed the school car parking areas can accommodate overspill car parking. The proposed layout has been amended to address the concerns of Traffic & Transportation in relation to swept paths and the layout of disabled parking areas. Traffic & Transportation have confirmed that they have no objection to the proposal. They have requested a condition requiring a scheme to control parking on King Oswy Drive in the vicinity of the site and this is proposed. In highway terms the proposal is considered acceptable.

## UPDATE REPORT

### TREES

1.19 At the northern end of the site are a number of mature (Poplars) and semi mature trees and objections have been raised to the loss of the trees. The applicant has confirmed that the trees will be removed and an agreed landscaping scheme implemented. The Council's Arboriculturalist has indicated that Poplars are short lived and are not being replaced on school sites. He would not therefore resist the removal of the trees. Replacement planting can be accommodated within the site and a landscaping condition is proposed which will ensure replacement planting as appropriate.

### CRIME & ANTISOCIAL BEHAVIOUR

1.20 Objections have been received that the facility will encourage or facilitate crime and antisocial behaviour. It has previously been concluded that the proper use of the facility should not unduly affect the amenity of neighbours. However given the neighbours previous experiences with a large sports hall building, and the criminal and antisocial behaviour it attracted, there are understandable concerns that the development might attract or facilitate similar episodes of crime and antisocial behaviour.

1.21 Available statistics on crime and antisocial behaviour indicate that the occurrences of such instances in recent years are relatively low on the school site. The Head Teacher of the school advises that "since we took over the occupation of the new school buildings in July 2004 there has been a remarkable decrease in instances of intrusion, vandalism and damage as compared with the previous buildings. We have suffered no intrusions or burglaries and damage and vandalism have been both rare and minor". The Head Teacher identifies two instances of note, one a bin fire, and the second an incident of youths on the roof, it is notable that in both cases culprits were identified on CCTV and apprehended. Cleveland Police in their response record only two reported crimes in the last year, one, the theft of a phone, the other, the criminal damage to the refuse bin referred to by the school. The Community Safety Research Team between April 2006 and March 2009 records 6 crimes and 4 instances of antisocial behaviour over this 3 year period.

1.22 A particular concern are the landscaped area and the small squares to the west side of the building. The applicant has confirmed that 3m high fences will be erected at either end of the building to restrict access to the landscaped area, additional 3m fences will be erected across their openings to restrict access to the squares. Hawthorn hedge planting is also proposed along the boundary with neighbours. The applicant has again confirmed that CCTV, designed so as to not intrude on the privacy of the adjacent neighbours, will be provided on site and that its coverage would extend to this area of the site. Access to the building will be via a key card system to prevent casual access. In addition the services of a local security company, which will visit the site three times a night, seven days a week will be retained. The applicant has also advised that he will "act swiftly and in direct communication with residents and the school to resolve discuss and progress

## UPDATE REPORT

issues that may arise”. Conditions covering security measures and enclosures are proposed. In discharging these conditions further consultation with Cleveland Police on the range of measures proposed would be sought.

1.23 Given the conditions and the measures already proposed by the applicant it is considered that any issues relating to crime and antisocial behaviour can be effectively managed on the site.

### OTHER MATTERS

1.24 In the course of considering this and the previous application reference has been made to possible alternative sites for the development. It must be stressed at the outset that it is the acceptability of the current proposal on the current site that Members must concern themselves with not whether the project would be better located on another site. Nonetheless given the speculation the applicant has prepared a short statement in which he clarifies the rationale behind the choice of the current site and his position in relation to alternative sites. This is attached as an Appendix. The applicant concludes that the proposed site represents the most suitable site in terms of functionality, ease of use and safety.

1.25 The development will require the removal of the school's eco-project which was previously located on the site. Whilst detailed discussion have not taken place, it is considered likely that there is potential to relocate this small project elsewhere on the school site. A new planning application would be required.

### CONCLUSION

1.26 The proposal is considered acceptable and is recommended for approval.

**RECOMMENDATION : - APPROVE** subject to the following conditions:

- 1 The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
- 2 The development hereby approved shall be carried out in accordance with plans and details received on 28th April 2009 as amended in relation to the site layout by the drawing 867-08-P002F received at the Local Planning Authority on 14th May 2009, unless otherwise agreed in writing by the Local Planning Authority.  
For the avoidance of doubt.
- 3 Unless otherwise agreed in writing with the Local Planning Authority the site and building levels shall be in accordance with drawing 867-08-P004A (Proposed Site Sections).  
In accordance with the submitted details and in the interests of the amenities of the occupants of neighbouring properties.

## UPDATE REPORT

- 4 The premises shall be used as a performing arts centre in accordance with the details submitted with the application and for no other purpose including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order with or without modification.  
In accordance with the application and in the interests of the amenities of the occupants of neighbouring properties.
- 5 Unless otherwise agreed in writing prior to its installation details of the Biomass Boiler shall be submitted to and approved in writing by the Local Planning Authority, the Biomass Boiler shall be installed in accordance with the details so approved.  
In the interests of the amenities of the occupants of neighbouring properties and for the avoidance of doubt.
- 6 Unless otherwise agreed in writing by the Local Planning Authority the development hereby permitted shall not be brought into use until a "prohibition of waiting order" has been implemented on the public road in accordance with details first submitted to and approved in writing by the Local Planning Authority.  
In the interests of highway safety.
- 7 Unless otherwise agreed in writing with the Local Planning Authority prior to the commencement of development a scheme of security measures incorporating 'secured by design' principles shall be submitted to and approved in writing by the Local Planning Authority. Once agreed the measures shall be implemented prior to the development being occupied and shall remain in place throughout the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.  
In the interests of security and the amenity of neighbours.
- 8 A detailed scheme of landscaping and tree and shrub planting shall be submitted to and approved in writing by the Local Planning Authority before the development hereby approved is commenced. The scheme must specify sizes, types and species, indicate the proposed layout and surfacing of all open space areas, include a programme of the works to be undertaken, and be implemented in accordance with the approved details and programme of works.  
In the interests of visual amenity.
- 9 Any trees/shrubs required to be planted in association with the development hereby approved, and which are removed, die, are severely damaged, or become seriously diseased, within five years of planting shall be replaced by trees or shrubs of a similar size and species to those originally required to be planted.  
In the interests of visual amenity.
- 10 Notwithstanding the details shown on the approved plans details of all external finishing materials shall be submitted to and approved by the Local Planning Authority before development commences, samples of the desired materials being provided for this purpose.  
In the interests of visual amenity.
- 11 Notwithstanding the details shown on the approved drawings details of all walls, fences and other means of boundary enclosure shall be



## UPDATE REPORT

submitted to and approved by the Local Planning Authority before the development hereby approved is commenced.

In the interests of visual amenity and security.

- 12 Unless otherwise agreed in writing with the Local Planning Authority the premises shall only operate between the hours of 08:30 and 21:00 on any day.

In the interests of the amenities of the occupants of neighbouring properties.

- 13 Unless otherwise agreed in writing with the Local Planning Authority at the time of development, the building(s) shall be provided with noise insulation measures, details of which shall first be submitted for the consideration and approval of the Local Planning Authority. The scheme shall ensure adequate protection is afforded against the transmission of noise between the development and the adjacent dwellinghouses. The noise insulation scheme, as approved, shall be implemented in full and retained thereafter during the lifetime of the development.

In the interests of the amenities of the occupants of neighbouring properties.

- 14 The use hereby approved shall not commence until there have been submitted to and approved in writing by the Local Planning Authority plans and details for ventilation filtration and fume extraction equipment to reduce cooking smells, and all approved items have been installed. Thereafter, the approved scheme shall be retained and used in accordance with the manufacturers instructions at all times whenever food is being cooked on the premises.

In the interests of the amenities of the occupants of neighbouring properties.

- 15 The use hereby approved shall not commence until there have been submitted to and approved in writing by the Local Planning Authority plans and details for the design and location of any plant/vents/intakes/extract fans etc related to any proposed ventilation system. Thereafter, the approved scheme shall be retained and used in accordance with the manufacturers instructions at all times.

In the interests of the amenities of the occupants of neighbouring properties.

- 16 Unless otherwise agreed in writing with the Local Planning Authority the proposed first floor corridor windows facing the rear of the properties on Tempest Road shall be fixed and shall be glazed with obscure glass which shall be installed before the building is brought into use and shall thereafter be retained at all times while the windows exist.

In the interests of the amenities of the occupants of neighbouring properties.

- 17 The landscaped area immediately to the west of the building and extending to its full length, including the two squares, shall be retained as a landscaped area. No access shall be allowed to staff, visitors, customers or pupils or others at any time save for occasional access for maintenance purposes or in the event of an emergency or emergency drill. Except for occasional access in the above

## UPDATE REPORT

circumstances all gates in the fences enclosing this area shall be kept locked at all times.

In the interests of the amenities of the occupants of neighbouring properties.

- 18 Unless otherwise agreed in writing with the Local Planning Authority details of all external lighting shall be provided prior to its installation. The lighting scheme shall thereafter be installed as approved and not added to, or varied, without the prior written agreement of the Local Planning Authority.

In the interests of the amenities of the occupants of neighbouring properties.

- 19 The fire escape door, located at the bottom of stair 2, shall be used only in the event of an emergency or fire drill and shall otherwise be kept closed at all times to prevent access to the landscaped area/squares to the west of the building. The door shall be alarmed so that its unauthorised use can be detected and addressed by the operators of the centre in a timely fashion. A sign on the door shall clearly state that it is alarmed and to be used only in an emergency. In the interests of the amenities of the occupants of neighbouring properties.

- 20 No music shall be played in, or be piped/relayed to, any external area of the site (i.e. outside the building).

In the interests of the amenities of the occupants of neighbouring properties.

- 21 Before the development is brought into use the approved car parking scheme, including the alterations and additions to the school car park, shall be provide in accordance with the details shown on the approved site plan. The car parking and manoeuvring areas shall be hardsurfaced with tarmac or similar. Thereafter the scheme shall be retained for its intended purpose at all times during the lifetime of the development.

In the interests of highway safety.

- 22 Prior to the building being brought into use details of the proposed cycle parking shall be submitted for the consideration and approval of the Local Planning Authority. The approved cycle parking shall be provided before the building is brought into use and shall be retained for the lifetime of the development.

In the interests of highway safety.

- 23 No development shall take place until the following matters have been addressed and agreed in writing by the Local Planning Authority:-

### 1. Site Characterisation

The development hereby permitted shall not be commenced until an investigation and risk assessment, in addition to any assessment provided with the planning application, is completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be

## UPDATE REPORT

produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
  - human health,
  - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - adjoining land,
  - groundwaters and surface waters,
  - ecological systems,
  - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

### 2. Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

### 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

### 4. Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition 2, which is subject to the approval in writing of the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is

## UPDATE REPORT

subject to the approval in writing of the Local Planning Authority in accordance with condition 3.

### 5. Long Term Monitoring and Maintenance

A monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over a period of 10 years, and the provision of reports on the same must be prepared, both of which are subject to the approval in writing of the Local Planning Authority.

Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced, and submitted to the Local Planning Authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 24 Prior to the commencement of development the rear courtyards elevations of the building (north and south) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved drawings.

For the avoidance of doubt these details were not included with the application.

- 25 Prior to its construction, details of the entrance/gateway feature shall be submitted to and approved in writing by the Local Planning Authority. This part of the development shall thereafter be constructed in accordance with the details so approved.

For the avoidance of doubt. These details were not included at the time of submission.

- 26 Before the development hereby approved is commenced, the building shall be pegged out on site and its exact location agreed in writing by the Local Planning Authority. The developer shall give 24 hours prior notification of his/her intention to peg out the proposed building on the site for an officer site visit to be arranged to check the setting out. In the interests of the amenities of the occupants of neighbouring properties.

# UPDATE REPORT

15<sup>th</sup> May 2009

Mr Jim Ferguson  
Hartlepool Borough Council  
Regeneration & Planning Department  
Bryan Hanson House  
Hanson Square  
Lynn Street  
Hartlepool  
TS24 7BT



**New Life Centre, King Oswy Drive, Hartlepool – H/2008/0198**

Dear Mr Ferguson,

We note comments made and followed up with communication and consultation with local residents to the current proposed site for the New Life Centre and would seek to comment as follows:

The New Life Centre (referred to as the 'centre' for the remainder of this correspondence) was subject to a number of key stages of development with regards to planning that were carried out in partnership with St Hild's School. The results of these resulted in the proposed site (as part of this and the previous application) being submitted and represents the most ideal arrangement in terms of functionality, ease of use and safety with respect to overall use of the planned centre.

We, as part of our processes and consultations did consider a number of other sites and our results are written below showing key advantages and disadvantages which brought about final decisions.

## West View Road Site

This site was considered and would have placed the centre in proximity to West View Road residents, Whin Meadows residents and be situated opposite to the entrance of John Howe Gardens.

The **advantages** of this site were:

- Reduced impact on the immediate school site
- More of a presence as part of a main entry and exit to Hartlepool – namely the A179
- No impact regarding legally required distances in relation to residences
- Further security to the site at that boundary

The **disadvantages** of this site were:

- Relationship and ultimately partnership with the school would be affected including management of the site
- Students safety crossing from the rear of St Hild's main building to activity in the centre would be affected
- Sustainability of the building based on reduced use by the school would cause a negative impact
- Truancy may become an issue for the school
- St Hild's would be forced to change physical security measures currently in place regarding the internal arrangements of how the site is managed and run
- An issue regarding the sports fields in relation to Sport England would occur as we would be looking to impact two pitches

The result of our findings concluded in us deciding that this site was not appropriate for the centre.

*H/2008/0198 Additional correspondence*



Registered as a Company  
Limited by Guarantee, at  
Companies House Cardiff.  
Registration no: 4216952  
and registered as a charity  
registration no: 1095674

# UPDATE REPORT

## Corner of Tempest Road and the school sports fields

This site was considered as it placed the centre at a position within what was believed at the time to be disused playing field space. At this stage, the building was much larger and far more imposing and situated all on one level. It was presented in an L-Shape. Through consultations we found that a smaller design would be much more welcome on the site. This is design that you have seen in both planning applications.

The **advantages** of this site were:

- The site allowed for the building to work more specifically with the school set back from the main road
- The site allowed for the partnership with the school to be developed
- Easy management, running and maintenance of the centre would occur in partnership with the school

The **disadvantages** of this site were:

- The site would be placed over sports pitches in use
- Reduced independence would exist for the Trust
- Security and safety issues would emerge due to the distance from the main road (King Oswy Drive) when the centre ran past school curriculum time

The result of our findings concluded in us deciding that this site was not appropriate for the centre.

## Old Henry Smith's School Main Site, King Oswy Drive

This site was considered with a view to placing the centre face on to King Oswy Drive.

The **advantages** of this site were:

- Greater presence in relation to the area
- A site which allowed for marked independence to occur

The **disadvantages** of this site were:

- The relationship with the school would be affected, making the building much more difficult to timetable and taking the school back to a position of splitting the site over a main road, not one, after consultation with the school, they felt appropriate.
- The further impact would be safety issues for students.
- Security of the site would be much more difficult as it would be a single building in what is a fairly large overall site.
- Timescales regarding negotiation of land were not on our side

The result of our findings concluded in us deciding that this site was not appropriate for the centre.

## Attached site to St Hilda's School with Multi Use Games Pitch to the rear.

This proposal was considered following on from the last planning committee. It is one which has been considered in relation to the site.

The **advantages** of this site are:

- It would feature as an extension to the school
- It would create a further impact from the school size perspective placing all resources under one roof.

The **disadvantages** of this site are:

- This site is not land that is either disused or already holding buildings and car parking
- The site suggestion does not meet the criteria of our funding arrangements
- The site would impact upon the MUGA to the rear of the site
- Access arrangements throughout the site would be highly and negatively impacted
- It places the school in a compromised position regarding the 'partnership' relationship

The result of our findings concluded in us deciding that this site was not appropriate for the centre.

# UPDATE REPORT

## Proposed site on King Oswy Drive opposite to St Hild's School

The proposed site is one that received recommendation for approval by Hartlepool Council planners previously and was a decision reached prior to this including key consultation with the school who as main partner for the project required an input into the position.

The **advantages** of the site were and are:

- ✦ It is not impacting upon used sports field
- ✦ It is within a good proximity to King Oswy Drive
- ✦ It has maximised the potential of the land
- ✦ The site will offer opportunities for higher and easier to manage security utilising fencing and CCTV further securing the site.
- ✦ The whole front of the school premises would become highly secure

The **disadvantages** of the site were and are:

- ✦ Consultation with residents has and continues to be focused on the buildings impact on them and anti-social behaviour, which we have addressed
- ✦ The building appears side on to the King Oswy Drive with some frontage showing
- ✦ Impacts upon the car park resulting in re-design and re-distribution

The result of our findings concluded in us deciding that this site was appropriate for the centre.

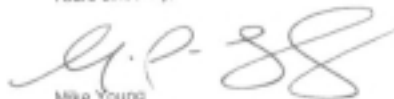
## Closing Statement

We have discussed and further consulted regarding the issues of anti-social behaviour with the school. Our further consultation with the residents have reached a stale-mate and it would appear that the facts are that the residents do not want the building there.

The measures we are taking as part of this new application to deal with these issues are as follows:

- ✦ To lower the building 0.5m.
- ✦ To move the building a further 2.5 from the rear of lampest road towards the school.
- ✦ To heighten the fences to the rear of the centre to 3m at each side and within the landscaped areas that help create the pavilion style design to the rear.
- ✦ The CCTV cameras will not intrude on neighbours gardens but will be aimed at the rear of the the building. Two on the largest area, one in each landscaped areas to the rear, one at the front of the building and one covering the car park. These measures were and are aimed at designing out crime and we feel that the site as a whole will add to the overall security and safety of those internal and external to the centre.
- ✦ To maintain and work with the school in their ongoing arrangements which include the services of NES (local security company) who visit the site each evening – three times, seven days per week.
- ✦ To act swiftly and in direct communication with residents and the school to resolve, discuss and progress issues that may arise with regards the centre.
- ✦ To confirm that this facility is a training centre, this is in no way a drop in provision. The programme of activity is focused upon performing arts and media and within the building we can assure that security will be just as prevalent. A 'key-card' operation will feature which will operate in the same way as hotel room systems that will only allow individuals access with the correct key to the assigned areas. This will protect the centre and the equipment as we will know who is in the facility and at one point resulting in a building that is easy and effectively managed.

Yours sincerely,



Mike Young  
Youth Project Coordinator  
For and on behalf of Headland Development Trust

cc. Correspondence out.

## UPDATE REPORT

**No:**  
**Number:** H/2009/0028  
**Applicant:** Mr Stephen Boland Billingham Reach Industrial Estate  
 Billingham TS23 1PX  
**Agent:** Able UK Ltd. Mr Richard Cram Able House Billingham  
 Reach Industrial Estate Billingham TS23 1PX  
**Date valid:** 22/01/2009  
**Development:** Mooring of a tanker ship in dry dock to store and test  
 ballast water and rain water pumped from the dock, water  
 to be discharged/pumped as appropriate  
**Location:** ABLE UK LTD TEES ROAD HARTLEPOOL  
 HARTLEPOOL

---

1. Since the writing of the Committee report 2 letters of objection have been received citing the following reasons:
  1. This plan is a further erosion of the standards which were worked out during the planning appeal stages and result in a more dangerous and more pollution prone system.
  2. Cleaning and testing a tanker is much more difficult than a purpose built tank.
  3. The plan shows a lack of safe working access round the ship, serious accidents will occur.
  4. Raises concerns regarding how the decision regarding the Ghost Ships was formed.
  5. Suggests that HBC engage a barrister to uphold the law.
  6. Suggests that a bond should be deposited with the Council.
  7. Suggests that the application be considered by full Council.

Copies of these objections are in the Members room.

2. The period for publicity for the new information expires the day of the planning Committee.
3. The outstanding consultation response has been received from the Health and Safety Executive Nuclear Installations Inspectorate who have no objection to the proposal.
4. As indicated in the previous report the application is considered acceptable, however conditions are proposed by the Environment Agency and the Council's consultant for the TERRC site Scott Wilson, these have been incorporated in the conditions below.

**RECOMMENDATION** – Given publicity does not expire until the end of the day of the Planning Committee it is advised that Members are minded to approve subject to the following conditions however delegate final decision to the Development Control Manager:



1. The development to which this permission relates shall be begun not later than three years from the date of this permission.  
To clarify the period for which the permission is valid.
2. The minimum capacity of the ships storage tanks shall be no less than 4,638m<sup>3</sup>, unless otherwise agreed in writing by the Local Planning Authority.  
To ensure the system is capable of accommodating no less than the volume of the holdings ponds approved under planning application H/2007/0543.
3. Details of the tanker to accommodate the hereby approved tanks shall be submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme unless otherwise agreed in writing by the Local Planning Authority.  
For the avoidance of doubt.
4. Prior to the mooring tanker being brought into use, design details relating to the jointed hose shall be submitted and approved in writing by the LPA.  
Thereafter the scheme shall be implemented in accordance with the approved details and retained during the life of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority.  
To ensure sufficient protection is designed into the pipe work leading from the ship to the quay in the event of the tanker ship being floated on a tidal surge/flood.
5. Prior to the mooring tanker being brought into use, filling and emptying arrangements of the ship's tanks, including levels of the outlet and inlet pipe, shall be submitted to and approved in writing by the Local Planning Authority.  
Thereafter the scheme shall be implemented in accordance with the approved details and retained during the life of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority.  
To ensure sufficient protection is designed into the system when the tanks are being drained.
6. No development shall proceed until an evacuation plan has been agreed in writing with the LPA. The plan shall be maintained for the design life of the development.  
To ensure that staff and visitors are aware of the risk from flooding and to ensure a safe exit from the site in an extreme event.

**PLANNING COMMITTEE**29<sup>th</sup> May 2009**Report of:** Chief Solicitor**Subject:** PLANNING CODE OF PRACTICE

---

**1. PURPOSE OF REPORT**

The purpose of this report is to seek the further views of the Members 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. This document incorporates suggested changes following on from discussion at the Planning Working Group held on 6<sup>th</sup> May 2009. 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. Ultimately Council will need to consider formal adoption of this document. It should be noted that draft versions of the attached draft 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 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.

#### **4. COMMENTS FROM THE PLANNING WORKING GROUP**

4.1 As indicated, on 6 May 2009, the Planning Working Group which comprised the Chair and Vice Chair of the Council's Planning Committee together with serving Members of that Committee considered the draft Planning Code of Practice. That Working Group took on board the sentiments of the Council's Standards Committee who believed it was imperative that Members undergo compulsory training in relation to the exercise of the Council's planning function. For ease of reference, the appended draft contains various "track changes" but the salient points which Members need to be alert and responsive to, are as follows;

- Para 4.7 - clarification that the "general principles" as recited have now been incorporated as a preamble to the Council's Code of Conduct.
- Para 5.3 - a notation of the specific changes through legislative and other changes to the planning system.
- Section 7 - again an indication of some of the "general principles" involving the operation of the decision making process as it applies to planning.
- Section 8 - the aspect of lobbying and effectively a protocol as to how a Member (and indeed officers) should act.
- Section 11 - the changes instituted through legislation whereby a Member who would ordinarily be conflicted out from participation through having a personal and prejudicial interest, is allowed to make "representations". Members should be aware of the particular emphasis in para 11.9 to the concept of "predetermination" as opposed to a disposition towards a view, essentially whether or not a Member had closed their mind in the consideration of an application, which would entail they should take no part in the decision making process.
- Section 15 – committee procedures, with note that a significant amount of planning applications fall within the Council's Scheme of Delegation. Further, under para 15.3 that Members should similarly be constrained to the time limits imposed through "public speaking rights" as afforded to applicants and objectors. In addition, under para 15.4 that Members should not exercise their vote, should for any reason they have left the debate upon an item which would have the impact of compromising (or even a perception thereof) their determination upon an item. Members are also reminded under para 15.8 a possible discretion to the Chair and Vice Chair within the context of a briefing meeting and to the proper governance of the committee, to withdraw items from the agenda, should circumstances so require.

- Para 24.1 - recites the Council's Corporate Complaints Procedure wherein if a matter cannot be resolved on a departmental basis, reference should be made to the relevant portfolio holder, for further consideration.
- Section 25 - that Members should undergo regular training as part of their professional development but also that such training should be compulsory ie, that until Members have undertaken the relevant training, they should not vote on any planning application or the consideration of any planning item until they have attended recognised training. Although Members should identify such training as being part of their continuing development, this clearly has impact upon those newly elected Members who will serve upon the Planning Committee and those individuals who attend in a substitute capacity.

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.

## **5. RECOMMENDATION**

- 5.1 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 – 05/09

Deleted: 3

**CONTENTS**

|   | <b>PAGE</b> |
|---|-------------|
| 1. INTRODUCTION .....   | 4           |
| 2. THE NEED FOR A CODE .....  | 4           |
| 3. SCOPE OF THE CODE .....  | 4           |
| 4. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS .....                               | 5           |
| 5. WHAT PLANNING DECISIONS ARE BASED ON .....   | 6           |
| 6. DUTIES AND SANCTIONS .....   | 8           |
| 7. THE DECISION MAKING PROCESS .....  | 8           |
| 8. LOBBYING OF AND BY COUNCILLORS .....   | 9           |
| 9. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS .....                                   | 11          |
| 10. REGISTRATION OF INTERESTS .....   | 12          |
| 11. DECLARATION OF INTERESTS BY MEMBERS AT COMMITTEE .....                              | 12          |
| 12. PARISH OR TOWN COUNCIL MEMBERSHIP .....   | 14          |
| 13. UNAUTHORISED DEVELOPMENT OR BREACH OF LISTED BUILDING<br>CONTROL .....              | 14          |
| 14. OFFICER REPORTS TO COMMITTEE .....  | 14          |
| 15. COMMITTEE PROCEDURES .....  | 15          |
| 16. COMMITTEE SITE VISITS .....   | 16          |
| 17. DECISIONS DELEGATED TO OFFICERS .....   | 17          |
| 18. DECISIONS CONTRARY TO THE DEVELOPMENT PLAN .....                                    | 17          |
| 19. DECISIONS CONTRARY TO OFFICER ADVICE .....  | 17          |
| 20. APPROVING REPEAT APPLICATIONS FOR DEVELOPMENT<br>PREVIOUSLY REFUSED .....           | 18          |
| 21. DEVELOPMENT PROPOSALS SUBMITTED BY, OR AFFECTING,<br>COUNCILLORS AND OFFICERS ..... | 18          |
| 22. THE COUNCIL'S OWN DEVELOPMENTS .....  | 19          |
| 23. THE MEDIA .....   | 19          |
| 24. RECORD KEEPING AND COMPLAINTS .....   | 20          |
| 25. TRAINING .....  | 20          |
| 26. LEARNING FROM PAST DECISIONS .....  | 20          |
| 27. HOSPITALITY .....   | 21          |

|                                  |                      |
|----------------------------------|----------------------|
| 28. RACIST COMMENTS .....        | 21                   |
| APPENDICES - 1, 2, 3, 4, , ..... | 22/23-27<br>28,29-32 |

*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 complements and expands on the Model Code and is an annex to it. The Model Code is essentially concerned with the conduct of individual councillors'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 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 land holdings 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 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 a Solicitor *within the Legal Services Division* 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 success or 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 other's roles and positions. This relationship, and the trust which underpins it, must never be abused or compromised.

Deleted: District

**4.2** Therefore:

- *Individual Councillors should not give instructions to Officers on planning matters.*
- *Officers' actions will follow Council policy and Committee 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.*

Deleted: Board

Deleted: the Principal

**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 (as embodied within the preamble to the Council's Code of Conduct) 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 (6) of the Planning & Compulsory Purchase Act 2004 'If regard is had to the development plans the determination must be made in accordance with the plans 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;

Deleted: 5.3

Deleted: The starting point for decision on planning applications is the development plan. Section 54A of the Town and Country Planning Act says that planning decisions shall be made in accordance with the development plan, unless material considerations indicate otherwise.

Deleted: .

Deleted: Cleveland Structure Plan (incorporating Alteration No 1) – 1995.

Deleted: adopted 1994).

Deleted: It will be supplemented by the following plans which are adopted:

- Tees Valley Structure Plan
- Hartlepool Local Plan (Revised Deposit – August 2003)

- 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, eg 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 ~~is the decision maker 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 business 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.

Deleted: 38

Deleted: Guidance Note 1 (Revised) (General Policy and Principles)

Deleted: character

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~~

Deleted: are

Deleted: s

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.

*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.*

### 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*

## 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,

Deleted: 38

Deleted: Policy Guidance Note 1 (Revised)

Deleted: 52

Deleted: Policy Guidance Note 1 (Revised)



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.

Deleted:

**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 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. 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 **avoidance 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** **Subject to paragraph 11.3,** 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 **in paragraph 11.4,** 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 - ie 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 **(in essence they had ‘pre-determined’ the 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

Deleted: T

Deleted: above

Deleted: assistance

Deleted: T

Deleted: although

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 for the development in question. In that sense, the member becomes almost the 'internal applicant'. 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 or Parish Meeting on every planning application. Planning Officers may, on request, attend a Parish 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 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 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's Planning 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

Deleted: district

Deleted: c

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.

15.2 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.

Deleted: ¶  
¶  
¶

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 individual wishing to speak on an application can ask to address the Committee for a defined time, ordinarily four minutes. Members may then ask questions of that individual if they wish. If the applicant (or agent) wish to speak or respond to points raised, they can then do so. Again, Members will then debate the merits of the case and arrive at a decision. For the avoidance of doubt, Members should also be similarly limited to the time constraints mentioned above and should not speak more than once at the 'debate stage' unless the Chair otherwise determines.

Deleted: .

## 15. COMMITTEE PROCEDURES

15.1 Decisions relating to planning applications (other than those matters dealt with under the Council's Scheme of Delegation) are taken by the Council's Planning Committee. The procedure for processing planning applications may be summarised as follows:

PLANNING OFFICERS  
*prepare report on planning application  
with recommendation*



PLANNING COMMITTEE  
*discusses the report and determines  
applications (the Committee may choose to  
visit the site first)*

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.**

Formatted: Font: Bold

Deleted:

Deleted: format

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) with justified planning reasons;
- refuse planning permission, with justified planning reason(s);

Deleted: .

- 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 Plan/Local Development Plan proposals are referred to the 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.*

At a briefing and in order to ensure the proper conduct of the Committee meeting and to minimise any inconvenience, the

Chair and Vice Chair may agree for an item(s) to be withdrawn if circumstances so require, the Committee being notified at the commencement of their meeting, of such withdrawal of the item(s) from the agenda.

Formatted: Font: Not Italic

## 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 generally 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 Regeneration and Planning. some in consultation with the Chair of the Planning Committee. These are wide ranging but generally less contentious, the discharging of planning conditions and breaches of planning conditions. 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. The procedure for processing delegated planning applications may be summarised as follows:

PLANNING OFFICERS  
prepare report on planning application  
with recommendation

Development Control Manager  
discusses the report and determines  
applications (the Development Control  
Manager may choose to visit the site first)

Deleted: PLANNING  
COMMITTEE

Deleted: a

Deleted: Committee

## 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 In some circumstances (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. More details are set out in Appendix 2(5).

Deleted: the decision would be a significant departure from the Development Plan,

Deleted: Office of the Deputy Prime Minister

Deleted: less contentious proposals, such as house extensions, advertisements, small industrial extensions,

Deleted: imposed by a Committee

## 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 and/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 require referral (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 Development Control Manager on behalf 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

Planning Code of Conduct

PAGE 18

**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 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.

Deleted: *be significant departure from the plan*

Deleted: *requir*

Deleted: *in g*

Deleted: *g*

Deleted: *representatives of*

**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** For 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 Officers 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 Regeneration and Planning and/or the Development Control Manager to the proposal.*

Deleted: Director of

**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 will be reported to Committee where the application does not accord with the Scheme of Delegation.
- All applications for the Council's own development will be the subject of a written Officer report, as with other applications.

Deleted: and not dealt with by the officers under delegated powers

## 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-determined or pre-judged (as opposed to a pre-disposition) the planning application ; and;
- 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. If the complaint cannot be resolved within the Department it will be referred to the relevant 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.

Deleted: judicial

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 as part of their personal development.
- Members newly elected to the Council and those serving upon the Planning Committee without prior training (including substitutes) should not vote upon any planning application or the consideration of enforcement and other

Deleted: investigated separately by an officer outside of the Department of Regeneration and Planning.

~~action until they have attended a recognised training event on planning.~~

- 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, officers 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. Councils should provide 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.

## 28. RACIST COMMENTS

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

- 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.

**Deleted:** attend

**Deleted:** within their first year on the Council.

**Deleted:** A special training event for Members will be held after each four yearly election of all Members.

**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 are 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(6) 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.

Deleted: 54A Town & Country Planning Act 1990).

Deleted: v) Members have a statutory duty when determining planning applications "to seek the achievement of the general objectives of the structure plan for the time being in force in their area". (Paragraph 7 of Schedule 1 to the Town & Country Planning Act 1990).

Deleted: i

Deleted: i

Deleted: i

## 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 a 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) **ADIUDICATION 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. The Town and Country Planning (Consultation) (England) Direction 2009 and accompanying Circular 02/09 should now be read in conjunction with this power. There are now five broad categories of development a Local Planning Authority must refer if it does not propose to refuse the development. These are Green Belt development, large office retail and leisure developments outside town centres, world heritage development, playing field development and flood risk development.

Deleted: (in particular, the requirement for

Deleted: to

Deleted: applications

#### (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 country side.

Deleted: in circumstances where English Heritage are sustaining an objection on the grounds that a proposed development could have an adverse impact on the outstanding universal value, integrity, authenticity and significance of a World Heritage Site or its setting).

Deleted: ¶

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 of Regeneration and Planning [\[NB: Title to be revised in the light of the Business Transformation Programme\]](#) 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 offsite 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.

|   |   |
|---|---|
| <b>Planning Committee</b>   |   |
| <b>Membership :</b>   | <b>16</b>   |
| <b>Quorum :</b>   | <b>7</b>  |
| <b>FUNCTIONS</b>  | <b>DELEGATIONS</b>  |
| 1. All functions relating to town and country planning and development control (as set out in Part A of Schedule 1 to the Regulations). | <b><i>Director of Regeneration and Planning</i></b><br><br>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 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   |
| 5. The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.* | iv) the refusal of an application except with the agreement of the Chair of the Committee.   |
|  | <p>v) except in cases of urgency</p> <ul style="list-style-type: none"> <li>a) power to require the discontinuance of a use of land</li> <li>b) power to serve a stop notice</li> <li>c) power to issue an enforcement notice</li> <li>d) power to apply for an injunction restraining a breach of planning control</li> <li>e) power to require proper maintenance of land</li> <li>f) power to serve a building preservation notice and related powers</li> <li>g) power to issue enforcement notice in relation to demolition of unlisted building in conservation area</li> <li>h) powers to acquire a listed building in need of repair and to serve a repairs notice</li> <li>i) power to apply for an injunction in relation to a listed building,</li> </ul> <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  |
| 6. Powers, related to Commons Registration as set out in part B of Schedule 1 to the Regulations. [1B.37 & 38]       |   |
| 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><b>Director of Neighbourhood Services</b></p> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol> |
|  | <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> </ol>   |

| <b>Planning Committee</b> (continued)  |  |
|--|--|
| <b>Function</b>  | <b>Delegation</b>  |
|  | <p><b>Chief Solicitor</b></p> <ol style="list-style-type: none"> <li>1. Power to confirm without modification unopposed creation, diversion or extinguishment Orders in respect of Public Rights of Way, following the statutory advertising period.</li> <li>2. Power to confirm, without modification, unopposed footpath and footway conversion orders following the statutory advertising period.</li> <li>3. Power to confirm, without modification, all future unopposed Definitive Map Modification Orders following the statutory advertising period.</li> </ol> |
| <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><b>Director of Neighbourhood Services</b></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>  |  |

Deleted: ¶

Page Break