

CONSTITUTION COMMITTEE AGENDA



12 June 2009

at 2.00 pm

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

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

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

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

- 3.1 To confirm the minutes of the Constitution Committee of 1 May 2009.
- 3.2 To consider the minutes of the Constitution Working Group of 29 May 2009
(*To follow*).

4. ITEMS REQUIRING DECISION

- 4.1 Business Report – *Democratic Services Team Manager*
- 4.2 Planning Code of Practice – *Chief Solicitor*
- 4.3 Questions On Notice At Full Council – Rule 11.2(ii) - *Chief Solicitor*

5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

1 May 2009

The meeting commenced at 12 noon in the Civic Centre, Hartlepool

Present:

Councillor: Carl Richardson (In the Chair)

Councillors: Sandra Fenwick, Bob Flintoff, Marjorie James, Pauline Laffey, Ann Marshall, George Morris and Arthur Preece.

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

Also Present:

Ian Irvine, President, Teesside Valuation Tribunal
David Mulgrew, Clerk, Teesside Valuation Tribunal

52. Apologies for Absence

Apologies for absence were received from The Mayor Stuart Drummond, Councillors Rob W Cook and Chris Simmons.

53. Declarations of interest by Members

None.

54. Confirmation of the minutes from the following meetings

- (i) Constitution Committee – 27 March 2009 – confirmed.
- (ii) Constitution Working Group – 27 March 2009 – received.

55. Matters arising from the minutes

Reference was made to minute 51 of the Constitution Committee, 27 March 2009 and a Member questioned whether any progress had been made with the scheduling of the State of the Borough Debate. The Chief Solicitor indicated that he had emailed the Mayor expressing the dissatisfaction of the Constitution Committee that the Debate had not taken place, in accordance with the Committee's instruction. . It was noted that due to the

forthcoming election, the “purdah” period had commenced and it would not therefore be appropriate to hold a debate within this current municipal year. It was questioned whether this was a breach of the Council’s Constitution. The Chief Solicitor indicated that should a complaint be received in relation to a possible breach of the Constitution, this would be investigated by the Chief Executive.. Members wished to formalise their complaint to this effect and the Chief Solicitor indicated that he would commence enquiries and report back to this Committee by way of confidential report. However, if the complaint, through those enquiries, was more related to asible breach of the Code of Conduct, this would need to be referred to an Assessment Sub-Committee of the Standards Committee, for consideration, as to whether a formal investigation should be undertaken , or not.

A Member also questioned whether the State of the Borough Debate held in the Autumn of 2007 was also a breach of the Constitution due to the fact that each of the portfolio holders undertook Debates in line with their executive responsibilities.

It was suggested that future State of the Borough Debates should be scheduled within the Council diary which was produced annually and should indicate that the State of the Borough Debate would be held during the month of October at 7pm with the date and place to be agreed between the Mayor and Chairman.

56. Teesside Valuation Tribunal (*Democratic Services Team Manager*)

The Democratic Services Team Leader confirmed that representatives from the Teesside Valuation Tribunal had been invited to the meeting to discuss the Council’s nominations to the Tribunal. Members had a brief discussion about the issues of Council nominations prior to inviting the representatives to join the meeting. The Chief Solicitor indicated that the Department for Communities and Local Government were consulting at the moment on the Regional Framework for Valuation Tribunals for England.

The President and Clerk to the Teesside Valuation Tribunal joined the meeting at this point.

The Clerk provided Members with a brief background to the Tribunal and a history to how appointments had previously been made. It was highlighted that the Regulations which governed Valuation Tribunals stated that the membership of any Tribunal should not exceed one-third councillors. The current membership of the Teesside Valuation Tribunal included 3 councillors and 1 non councillor which were confirmed at the meeting of Council on 30 October 2008. An additional 5 non-councillor members were required to achieve the necessary proportionality across the required 9 members of the Tribunal. The Clerk had provided 5 non-councillor nominations to be agreed by the Council to enable the Tribunal to continue to meet. The importance of retaining experienced and trained members on the Tribunal panel was stressed.

Clarification was sought on the current appointments from Hartlepool who were originally non-councillor appointments and automatically became councillor appointments upon their election as a member of Hartlepool Council. The President indicated that the term of office for any member on a Tribunal Panel was 3-6 years and they would remain a member for that term of office even if their status changed, unless they resigned from the Panel.

The legality of the age limit of 72 years was also questioned by Members. The Clerk responded that Government Regulations provided advice which indicated that lay members on Panels were not bound by the age discrimination regulations as employees were.

It was noted that the appointment process for Valuations Tribunals was due to change from October 2009 and Members sought clarification on the new process. The President indicated that from October 2009 all appointments to Valuation Tribunals would be made by a Judicial Appointment Commission and not as currently undertaken through local authorities. However, it was confirmed that existing Tribunal members would be written to in due course and given the opportunity to continue being a member of the Tribunal post October 2009.

Clarification was sought on whether Tribunal members would be able to claim expenses under the new system. The Clerk indicated that there were no plans to change the current expenses system and that travel, subsistence and loss of earning could be claimed for.

The Clerk and President of the Teesside Valuation Tribunal were thanked for their attendance and for answering Members' questions and left the meeting at this point.

A discussion ensued in which Members noted their disappointment and lack of accountability with the new system for valuation tribunals. As a result, Members did not wish to endorse the suggested 5 non-councillor members to the Tribunal Panel.

With reference to the Department for Communities and Local Government consultation, Members suggested that the Chief Solicitor as Monitoring Officer prepare a response from the Council in consultation with the Chair of the Constitution Committee.

Decision

- (i) Members did not endorse the additional 5 non-councillor representatives suggested by the Clerk of the Teesside Valuation Tribunal.
- (ii) The Chief Solicitor, to prepare a response to the Department for Communities and Local Government consultation paper on Valuation

Tribunals in conjunction with the Chair of the Constitution Committee.

57. Any Other Business – Announcements at Council

It was brought to Members' attention that requests had been made for announcements to be made at Council meeting by the Chairman immediately prior to the commencement of the meeting. It was suggested that requests for announcements should be formalised in a procedure whereby any such requests should be made to the Chairman prior to 12 noon on the day of the Council meeting. This should be adhered to at all times, apart from exceptional circumstances ie major disasters.

Decision

That requests for announcements to be made at a Council meeting should be received by the Chairman of the Council no later than 12 noon on the day of the meeting.

The meeting concluded at 1.25 pm.

CHAIRMAN

CONSTITUTION COMMITTEE

12 June 2009



Report of: Democratic Services Team Manager

Subject: BUSINESS REPORT

1. CIVIC HONOURS COMMITTEE

- 1.1 Members will recall that at the meeting of the Constitution Committee held on 23 January 2009, the composition of the Civic Honours Committee was discussed. It was agreed at the meeting of the Constitution Working Group held on 13 March 2009 that the first meeting of the Civic Honours Committee be convened.
- 1.2 A meeting of the Civic Honours Committee was arranged for 29 April 2009. Attached at **Appendix 1** is the report which was submitted to that meeting on the role, remit and terms of reference of the Committee. Also attached at **Appendix 2** are the minutes of that meeting.
- 1.3 Members will note, from the minutes, that the Committee agreed that the role and remit of the Civic Honours Committee be submitted to the Constitution Working Group, Constitution Committee then to Council for agreement and adoption into the Council's Constitution.'
- 1.4 As suggested by the Committee, Mrs Blakey and Mr Foreman, resident representatives on the Civic Honours Committee, have been invited to attend this meeting where the remit would be further considered.
- 1.5 At the meeting of the Constitution Working Group held on 29 May 2009, the Working Group discussed the role, remit and terms of reference of the Civic Honours Committee together with the draft process relating to the nomination and election of Honorary Freeman and Aldemen, attached at Appendix 1, to which the following amendments (*in italics*) were suggested:-

1.1.1 to be amended to read as follows:-

Nominations for election as an honorary freeman should

- (a) have been born in the Borough *and/or*;
- (b) reside or have resided in the Borough *and/or*;
- (c) have or have had strong established links to the Borough; *and*
- (d) in some manner have brought distinction upon the Borough.

2. RECOMMENDATION

- 2.1 That subject to the amendment detailed above, the role, remit and terms of reference of the Civic Honours Committee together with the process relating to the nomination and election of Honorary Freeman and Alderman be submitted to Constitution Committee and commended to Council for adoption into the Council's Constitution.

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CIVIC HONOURS COMMITTEE

29 April 2009



Report of: Chief Solicitor

Subject: ROLE, REMIT AND TERMS OF REFERENCE OF
THE CIVIC HONOURS COMMITTEE

1. PURPOSE OF REPORT

To consider the role, remit and terms of reference of the Civic Honours Committee.

2. BACKGROUND

The amended composition and Member nominations for the Civic Honours Committee were agreed at a meeting of Council on 12 February 2009. The additional nominations for the resident representative and community empowerment representative were subsequently received also.

Consideration was given to the process for the submission of nominations for Civic Honours at a meeting of the Constitution Working Group on 27 March 2009. At this meeting, Members suggested that the Civic Honours Committee should meet to consider the role, remit and terms of reference of the Committee prior to the consideration of any nominations received.

3. PROCEDURE

At the meeting of Council on 26 October 2006, the procedure for the election of Honorary Freeman and Aldermen was adopted, see **Appendix A** attached. At the meeting of the Constitution Committee held on 23rd January 2009, a change to the composition of the Committee was agreed and that change has been reflected in the document attached. The scheme is intended to provide a certain and transparent process for the conferring of these honorary titles, and to establish criteria in each case. In the case of election of an honorary freeman, the general public would have the ability to make nominations. Nominations received would be considered by this Committee which has the power to recommend a nomination to Council.

4. TIMELINE

At the meeting of the Constitution Working Group held on 15 January 2009, the timetable for advertising the invitation to submit nominations and the process that follows was discussed and agreed as follows:-

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

At the meeting of the Constitution Committee held on 23 January 2009, the above timeline was agreed. At that meeting it was noted that the current process for submitting nominations seemed unwieldy and it was suggested that there should be provision to be able to act quickly and outside of this process. A discussion ensued on the merits of having a rolling programme of advertising for nominations to ensure that the residents of the town were reminded that this facility for public recognition was available...It was acknowledged that there were a variety of honours and awards that could be bestowed on the residents of the town for different reasons or levels of recognition, for example the Community Awards. Members considered that the Civic Honours Committee could look at nominations for the whole range of Civic Awards available.

5. REMIT

Attached at Appendix B is a draft remit in respect of this Committee.

6. RECOMMENDATIONS

- (i) That Members note the content of this report and consider the remit of the Committee.

7. BACKGROUND PAPERS

Council Report and Minutes – 26 October 2006
Constitution Committee Report and Minutes - 23 January 2009
Council Report and Minutes – 12th February 2009

8. CONTACT OFFICER

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APPENDIX A

Draft Process relating to the nomination and election of Honorary Freeman Aldermen

1. Nominations

1.1. Freeman of the Borough of Hartlepool

1.1.1 Nominees for election as an honorary freeman should

- (a) have been born in the Borough, or
- (b) reside or have resided in the Borough, or
- (c) have or have had strong established links to the Borough and/or
- (d) in some manner have brought distinction upon the Borough

1.1.2 Nomination for election as honorary freeman may be made by any -

- (a) Hartlepool Borough Councillor
- (b) political party or group connected with the Council
- (c) voluntary organisation operating in the borough
- (d) corporate body with premises in the borough
- (e) public or charitable body, or
- (f) member of the public

1.1.3 The nominee must be either -

- (a) an individual person (not a body corporate), or
- (b) a group of individual persons,

but a person may not nominate him/herself

1.1.4 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should state the person or body making the nomination and his/her/its address and include an explanation of why the person nominated is considered appropriate to be elected as honorary freeman.

1.1.5 Publicity

Invitation to submit nominations for election as freeman of the borough shall appear in two editions of Hartbeat prior to the closing date for nominations, and shall be posted on the Council's website www.hartlepool.gov.uk

1.2 Honorary Aldermen

1.2.1 Nomination for election as honorary alderman may be made by any -

- Hartlepool Borough Councillor
- Political party or group connected with the Council

- 1.2.2 Nominations must be of a person who has formerly served as a councillor of Hartlepool Borough Council
- 1.2.3 Nominations must be in writing and may be submitted to the Chairman of the Council, the Mayor or the Chief Executive. A nomination should be signed by the person or on behalf of the group making the nomination and include an explanation of why the person nominated is considered appropriate to be elected as honorary alderman.

2. Consideration of nominations

- 2.1 Nominations for election as honorary freeman and honorary alderman considered by the proper officer to comply with the requirements of para 1 (but for this purpose disregarding para 1.1.1) shall be referred to the next meeting of the Civic Honours Committee. The committee will consider each nomination (including its compliance with para 1.1.1) and may resolve to recommend the nomination to the Council. The committee shall comprise

- The Mayor
- The Chairman
- Seven Members (3 Labour, 1 Conservative, 1 Liberal Democrat, 1 Administrative Group and 1 Independent)
- One Resident Representative, and
- One representative from the Community Empowerment Network

(the Resident Representative and the representative from the Community Empowerment Network, being non-voting members of the committee)

(Note - the proper officer for the purposes of para 2.1 is the Chief Executive or his nominee)

- 2.2 A nominee whose nomination is resolved to be referred to the Council will be invited, on a confidential basis, to indicate whether s/he would accept the relevant honour if offered.
- 2.3 Following confirmation of the nominee's prospective acceptance, at the next ordinary meeting of the Council the Council will determine whether or not they are minded to elect the nominee as honorary freeman or alderman, as the case may be. Before the matter is considered the Chairman will invite the Council to resolve to exclude the press and public pursuant to Local Government Act 1972 sched 12A para 2.
- 2.4 If the Council resolve that they are minded to elect the nominee as honorary freeman or alderman the matter shall be deferred to be dealt with at an extraordinary meeting of the Council convened especially for that purpose.
- 2.5 The date for the extraordinary meeting to confer the honour shall be fixed either by the Council at the meeting referred to in para 3.4 or by the Chairman

APPENDIX B

Civic Honours Committee	
Membership:	The Mayor The Chairman of the Council 7 Members Councillors Aiken, Akers-Belcher, Brash, Hill, James, Morris and Preece Non-voting members: Resident Representative: Ms C Blakey Community Empowerment Representative: Mr R Foreman
Quorum:	6 – A voting majority of 6 Members is required.
FUNCTION	DELEGATION
<ol style="list-style-type: none"> 1. Develop qualifying criteria against which applications for the Freedom of the Borough will be assessed. 2. Receive, consider and make recommendations to Council in respect of conferment of the Freedom of the Borough upon individuals or organisations. 3. Consider nominations for Honorary Alderman and make recommendations to the Council thereon. 4. Make recommendations and issue guidance as the Committee may consider appropriate to Council on the conferment of Civic Honours. 	

CIVIC HONOURS COMMITTEE

MINUTES AND DECISION RECORD

29 April 2009

The meeting commenced at 2.00 pm in the Civic Centre, Hartlepool

Present:

The Mayor, Stuart Drummond

Councillors: Martyn Aiken, Stephen Akers-Belcher, Jonathan Brash, Cath Hill, Marjorie James, George Morris, Carl Richardson and Arthur Preece

Resident Representatives:
Ron Foreman

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

1. Appointment of Chairman

The appointment of a Chairman was sought and Councillor Carl Richardson was elected Chairman of the Committee.

2. Apologies for Absence

Apologies for absence were received from resident representative Christine Blakey.

3. Declarations of interest by Members

None.

In response to a Member's question the Chief Solicitor provided clarification on when a declaration of prejudicial interest should be stated during the consideration of nominations for civic honours. For example should a close personal friend or member of the family be nominated for a civic honour, this would fall within a definition of being a personal interest may well be classed as being a prejudicial interest, although it would remain the Member's decision whether they felt this was prejudicial. Members were reminded of the requirement for the nomination process to be clear and transparent and that Members should not unduly influence that process..

4. Role, Remit and Terms of Reference of the Civic Honours Committee (*Chief Solicitor*)

The Chief Solicitor presented the report which had the criteria and process for the nominations for Honorary Freeman and Alderman already agreed at Council, attached by way of appendix. Also attached by way of appendix was a proposed overall role and remit for inclusion within the Council's Constitution.

Clarification was sought on the submission of nominations to the next ordinary Council meeting after consideration by the Civic Honours Committee. The Chief Solicitor indicated that any nominations received would need to be agreed by at least two-thirds of Members at Council prior to an Extraordinary Council being convened to bestow the agreed civic honours.

A Member noted the recipients of nominations as stated in paragraph 1.1.4 of appendix A and questioned whether it was appropriate for the Chairman of the Council and the Mayor to be receiving nominations for such honours. It was noted that the process as set out in appendix A had been agreed at Council and was already being undertaken, hence it would be difficult to change the process half way through implementation.

A discussion ensued on the fact that the honour of Freeman or Alderman was prestigious and it was suggested that a spectrum of honours could be agreed, including the community awards, and awarded depending on the level of achievement. Members were keen to clarify what criteria the spectrum of honours could be measured against and the merits of creating a 'scoring' system were discussed. A Member noted that it may be difficult to measure some achievements, ie impact on the town and was confident that the Members appointed to the Civic Honours Committee would make the appropriate decisions following a debate of the nominations received.

It was also suggested that the celebration of the investiture of all civic honours agreed should be undertaken at one Extraordinary Council.

The Chief Solicitor confirmed that the role and remit as attached at Appendix B would be submitted to the Constitution Working Group, Constitution Committee and then to Council for agreement and inclusion within the Council's Constitution. It was suggested that the resident representatives from the Civic Honours Committee should be invited to the Constitution Working Group where the remit would be further considered.

Decision

That the role and remit of the Civic Honours Committee as attached at Appendix B be submitted to the Constitution Working Group, Constitution Committee then to Council for agreement and adoption into the Council's Constitution.

The meeting concluded at 2.50 pm.

CHAIRMAN

CONSTITUTION COMMITTEE

12 June 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 6th 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
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HARTLEPOOL
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The main points of advice about the conduct expected of Members and Officers are emphasised in bold italics, like this sentence.

1. INTRODUCTION

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

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

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

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

2. THE NEED FOR A CODE

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

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

3. SCOPE OF THE CODE

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

3.2 It applies to both Councillors and Officers who are involved in operating the planning system - it is not, therefore restricted

to professional town planners or to Members in Committee meetings. The successful operation of the planning system relies on mutual trust and an understanding of each other's roles. It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

3.3 Both councillors and officers are guided by codes of conduct. The statutory code of conduct, supplemented by guidance from the Standards Board, provides standards and guidance for councillors. Employees will be subject to a statutory Employees' Code of Conduct. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (RTPI) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. However, not all Planning Officers are members of the RTPI, and parts of the Code of Professional Conduct are incorporated into this Code. The 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 successor Local Development Frameworks. References to applicants and objectors should therefore generally also be taken to refer to complainants and alleged contravenors in enforcement cases, and to landowners, developers and objectors

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

4. THE ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

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

4.2 Therefore:

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

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

planning decision is the requirement that a member

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

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

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

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

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

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

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

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

4.7 The principles from the Relevant Authorities (General Principles) Order 2001 (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;

- 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 businesses which are of value to the welfare of a local community may be material. Such arguments will seldom outweigh the more general planning considerations. That means such considerations generally have less weight.

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

Stage 1

- Identify the relevant development plan policies and other relevant material considerations (if any) in

respect of the application which need to be taken into account in the decision making process.

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

Stage 2

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

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

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

Stage 3

Weigh the material considerations in reaching a decision.

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

- ***In the decision making process, Members should not take into account irrelevant matters, allow***

them to outweigh important planning considerations and fail to take fully into account Government guidance on the weight to be attached to relevant considerations.

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

8. LOBBYING OF AND BY COUNCILLORS

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

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

is a formal administrative process involving rules of procedure, rights of appeal and an expectation that people will act reasonably and fairly, with the added possibility that an aggrieved party may seek Judicial Review of the way in which a decision has been arrived at, or complain to the Ombudsman on grounds of maladministration.; or to the Standards Committee that a member has breached the local code.

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

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

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

- *may listen to what is being said;*

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

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

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

- *Councillors should in general avoid organising support for or opposition to a planning matter to be determined by the Borough Council, and should not lobby*

other Councillors - such actions can easily be misunderstood by parties to the application and by the general public;

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

9. PRE-APPLICATION AND PRE-DECISION DISCUSSIONS

9.1 The Council encourages pre-application discussions between Planning Officers and potential applicants. These bring advantages to all parties: they can avoid applications being made which are clearly contrary to policy, and

so avoid unnecessary worries for those who could be affected; they can avoid abortive work for the Council and applicants by giving clear information about applicable policies, etc before proposals are designed; and so they can improve the quality of applications and development.

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

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

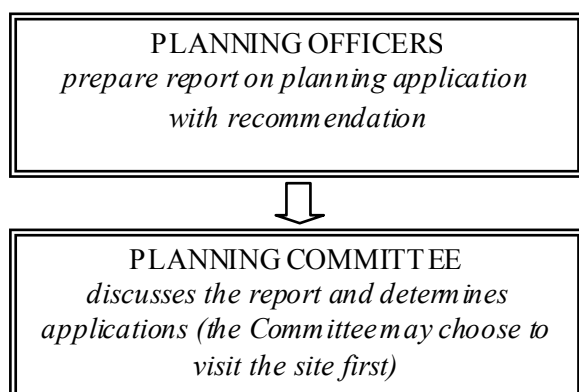
has received a written Officer report. Written Officer reports will be agreed through the Development Control Manager and will reflect the collective view of the Department - not the view of the individual author.

14.2 Reports should be accurate and should:

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

15. COMMITTEE PROCEDURES

15.1 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:



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

15.3 A guidance leaflet on public speaking and the process to be followed is available from the Borough Council. In essence, the officer will explain what is proposed and highlight the key planning issues. An 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.

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

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

- grant planning permission (usually with appropriate planning conditions) with justified planning reasons;
- refuse planning permission, with justified planning reason(s);

- defer the application for further consideration.

15.6 Planning enforcement decisions are normally taken by the Planning Committee. A written Officer report will normally be prepared in advance of the Committee. The report and the discussion at the Committee on some enforcement matters may not be available to the public, for example if the Council is considering a prosecution in the courts. Schedule 12A of the Local Government Act 1972 as amended sets out what can be considered in private.

15.7 Decisions on Local 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.

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)*

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).

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.

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

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

- there is perversity and maladministration, if a Local Planning Authority approves a planning application, which has previously been refused, where there has not been a significant change in the planning circumstances;
- the fact that there has been a significant change in the membership of the Planning Committee does not justify inconsistency between current and previous decisions;
- the perversity of approving a planning application, which has been previously refused, where there has been no significant change in the planning circumstances, is maladministration if:-
 - insufficient weight has been given to Officers' recommendations and Central Government guidance; and
 - there is a failure to give and record reasons for the authority's change of mind.

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

20.4 Therefore:

- *If a Committee is minded to approve an application for development previously refused, the proposer of the motion for*

20. APPROVING REPEAT APPLICATIONS FOR DEVELOPMENT PREVIOUSLY REFUSED

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.*

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.

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.*

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

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.

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.

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) **ADJUDICATION PANEL**

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

(2) **DISTRICT AUDITOR**

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

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

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

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

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

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

(3) **LOCAL GOVERNMENT OMBUDSMAN**

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

Examples of maladministration would include:-

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

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

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

(4) **JUDICIAL REVIEW**

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

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

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

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

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

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

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

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

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

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

APPENDIX 3**DRAFT LETTER FOR LOBBYISTS**

Dear Sir/Madam

The Role of a Councillor in a Planning Application

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

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

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

Any views that you have on an application should be sent directly to the Council's Director 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 off site or otherwise give the impression of influence or bias.

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

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

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

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

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

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

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

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

CONSTITUTION COMMITTEE

12 June 2009

**Report of:** Chief Solicitor**Subject:** QUESTIONS ON NOTICE AT FULL COUNCIL –
RULE 11.2(ii)

1. BACKGROUND

- 1.1 At its meeting on the 7th November, 2008, the Constitution Working Group requested a report to be prepared on the apparent contradiction, relating to questions on notice to the Cleveland Police Authority and to those questions to a member of the Cleveland Fire Authority pursuant to Council Procedure Rule 11.2(ii). This followed a Member question to a meeting of Council which was disallowed by the “Proper Officer” on the basis that the Member question did not fall within the terms of this applicable rule. For the avoidance of doubt, the Member question related to an ongoing prosecution and therefore did not fall with the parameters of a question to a Member of the Cleveland Fire Authority which by virtue of the applicable Procedure Rule is confined to matters contained within the minutes of the Fire Authority as attached to the agenda of the particular Council meeting. This report was mentioned to the Constitution Working Group on 29th May and references discussions with the Chair of the Cleveland Fire Authority. Should the Committee recommend to Council the proposed amendment to this particular procedure rule then under rule 24.2, the same would stand adjourned without discussion to the next Ordinary meeting of Council.

2. QUESTIONS ON NOTICE UNDER RULE 11.2

- 2.1 Members will be aware, that a question on notice at Council, needs to be in writing and given to the Chief Executive Officer before midday on the Friday before the meeting (or, in the case of the meeting held otherwise than on a Thursday, three clear working days before the meeting) and where such a notice is also signed by a Member. Specifically, Rule 11.2(ii) relates a question to a member appointed on such an outside body, as follows:
- *The person nominated by the Cleveland Police Authority pursuant to Section 20 of the Police Act, 1996 any question on any matter in relation to the discharge by the Police Authority of its functions; or*

- *A member of the Cleveland Fire Authority the question in relation to any matter contained in minutes of the Fire Authority attached to the agenda of the meeting.*

2.2 Members will also be patently aware, that a response under Rule 11.4 to a question can take the form of either a direct oral answer which will then allow for open debate in Council or where the matter cannot be conveniently be given by way of an oral answer, through a written response circulated to all Members of the Council. At the discretion of the Chair, the questioner may ask a supplementary question in accordance with Rule 11.2 at the next ordinary meeting of the Council about the issues related to that written answer.

3. **ROLE AND FUNCTIONS OF A POLICE AUTHORITY**

3.1 Current arrangements for the composition and function of a Police Authority derive from the provisions of the Police and Magistrates Courts Act, 1994, which in turn relate and have application to the 43 Police Authorities in England and Wales. Although there are currently proposals relating to direct elections of Police Authority members, the current composition of police authorities is seventeen members, with nine appointed through local authorities, three Members from the Magistrates Courts and five individuals representing the local community. The provisions of the 1994 Act, were further consolidated under the Police Act, 1996, with the primary responsibility of police authorities to maintain “an efficient and effective police force”. The other major functions of a Police Authority, for information, is as follows:

- to consult local communities on policing matters and priorities,
- set the budget for the police force,
- to set the strategic direction for policing in line with central government directives,
- monitor the forces performance, to ensure the maintenance of efficiency and effectiveness with the production of a policing performance plan including the three year strategy under the terms of the Police Reform Act, 2002,
- appoint a Chief Constable and senior officers

3.2 Pertinent to any consideration of Rule 11.2(ii), Section 20 of the Police Act, 1996, relates to questions on police matters at Council meetings. Through this statutory provision local authorities are obligated as follows;

“(1) Every relevant Council shall make arrangements (whether by Standing Orders or otherwise) for enabling questions on the discharge of the functions of the Police Authority to be put by Members of the Council at a meeting of the Council for answer by a person nominated by the authority for that purpose.

- (2) *On being given reasonable notice by a relevant Council of a meeting of that Council at which questions on the discharge of a police authorities functions are to be put, the Police Authority shall nominate one or more of its members to attend the meeting to answer those questions."*

4. ROLE AND FUNCTIONS OF A FIRE AUTHORITY

4.1 Under the Fire Services Act, 1947 (as amended through the Fire and Rescue Services Act, 2004), the power given to the establishment of Fire Authorities can be exercised through a combination of representatives appointed on behalf of the constituent local authorities. Following the relevant "Combination Scheme Order", the functions of the Cleveland Fire Authority are discharged through the four constituent authorities with membership being based upon applicable resident populations. Therefore, the twenty three members of the Cleveland Fire Authority are drawn on a 4, 6, 6 and 7 basis amongst the four Tees Valley Local Authorities. As is the case with the Police Authority, the statutory requirement of the Fire Authority is to maintain "economy, efficiency and effectiveness" or, in the case of the Fire Authority the maintenance of public safety. Furthermore, such an authority in operating a fire and rescue service has the following functions;

- promoting fire safety in its area,
- making provision for the purpose of extinguishing fires in this area and protecting life and property in the event of fires in its area,
- provision for rescuing people in the event of road traffic accidents and protecting people from serious harm, to the extent that it considers it reasonable to do so, in the event of road traffic accidents in its area,
- at the discretion of the Secretary of State, the provision of emergency services.

5. APPROACH OF THE OTHER CONSTITUENT AUTHORITIES

5.1 For the further information of Members, it appears that there are some similarities in the constitutional arrangements operating within the Tees Valley authorities with some subtle nuances. Within the constitutional arrangements of all the authorities, is a right to refuse a question, in any event, in the following given circumstances;

- the question is defamatory, frivolous or offensive,
- the question is substantially the same as a question put in the last six months,
- the question discloses or relates to confidential matter or matter which is otherwise exempt information as held by that authority.

5.2 Through the requirements of Section 20 of the Police Act, 1996, a Council is to make arrangements in relation to questions relating to the discharge by Police Authorities of their functions. No such statutory requirements exist in relation to a Fire Authority. Consequently, the three other Tees Valley

authorities whilst making explicit reference to questions to the Cleveland Policy Authority, direct questions to the Fire Authority either through questions tabled under matters relating to 'Joint Committees' or 'Joint Authorities' or through other 'Outside Bodies' as opposed to explicit reference to the Fire Authority. Furthermore, Stockton Borough Council, requires two clear days notice (unless the matter is one of urgency) where a question relates to the discharge of the functions of the Police Authority under the Rule 11.3 of its Council's Procedure Rules. Redcar and Cleveland Council under their Procedure Rule 11.5 require questions with at least five working days notice in writing and Middlesbrough Borough Council under Council Procedure Rule 8.8(i) requires seven clear days notice, to be given. It is also notable, that Middlesbrough Borough Council also requires questions to members of its Joint Committees/Joint Authorities and those representing Outside Bodies, to be given seven clear days notice of a Member question.

6. VIEWS OF THE WORKING GROUP AND THE CHAIR OF THE CLEVELAND FIRE AUTHORITY

- 6.1 Members of the Constitution Working Group at their meeting on 15th January 2009, clearly expressed a view that a wider definition of questioning should be available to members of the Borough Council towards representatives of a Council who sit upon the Cleveland Fire Authority. This is not currently the case, with the restriction to questions being related to the minutes of Fire Authority meetings, specifically attached to the agenda of a Council meeting. Members also noted that they would not wish to see a situation whereby Members were providing questions covering the operational and related activities of the Fire Authority and the Cleveland Fire Brigade but the present limited nature and scope of questioning undermined principles of accountability and transparency. This view was also expressed by the Chair of the Cleveland Fire Authority who indicated that the constituent members of the authority as drawn from the four Borough Councils lent itself to general questioning, comparable to that which existed (albeit under a statutory requirement) to those members serving upon the Cleveland Police Authority. It was therefore his view, that such general questions subject to the caveats such questions should not be of a defamatory or otherwise frivolous basis should be allowed under the Council's procedural rules.

7. CONCLUSION

- 7.1 Members will discern that whilst it is a statutory requirement for reference to questions to a Police Authority to be contained within the Council Procedure Rules of an authority, no such requirement exists in relation to a Fire Authority. It is of course open to Members to recommend a broader questioning of representatives of the Cleveland Fire Authority beyond reference to minutes of the authority which again currently needs to relate to

those minutes attached to the particular agenda of the relevant Council meeting.

- 7.2 Members must also have regard to matters of procedural fairness with adequate notice being provided to those Members of the Council who represent the Fire Authority through appointment to that particular body. Furthermore, questions should not be given which are of a nature of being defamatory, frivolous or otherwise being offensive and clearly should not relate to matters which could compromise a Member and possibly undermine the relationships between authorities. In addition, there may well be questions particularly of an “operational” nature which should be properly best directed to the Fire Authority as a corporate body, as opposed to questions to a Member of that entity, depending on the nature of the questions and its likely impact.

- 7.3 It is therefore suggested that an amended wording under Rule 11.2(ii) should relate as follows;

- *“A member of the Cleveland Fire Authority any question on any matter in relation to the discharge by the Fire Authority of its functions”.*

8. RECOMMENDATIONS

1. To note the contents of this report.
2. The Committee, subject to Council Procedure Rule 24.2 recommends to Council the amendments of Rule 11.2(ii) in accordance with paragraph 7.3 of this report.