

By: Geoff Wild – Director of Law and Governance

To: Planning Applications Committee – 14 July 2009

Subject: PROBITY IN PLANNING

Classification: Unrestricted

File Ref: PAC/03/09

Summary: To advise Members of the Committee of Standards Committee's Advice Note 4 on "the Application of the Code of Member Conduct to Development Control" and associated advice notes.

FOR INFORMATION

Introduction

1. The Standards Committee's Advice Note 4 "Advice to Members on the Application of the Code of Member Conduct to Development Control" is attached (**Appendix 1**).
2. Advice Note 4 takes account of the LGA guidance note "Positive Engagement – A Guide for Planning Councillors" (**Appendix 2**) and the Standard Board for England's Occasional Paper "Predisposition, Predetermination or Bias" (**Appendix 3**).

Predisposition versus Predetermination or Bias

3. The Advice Note was produced with the distinction between Predisposition and Predetermination firmly in mind. The Standards Board's Occasional Paper defines both states of mind and explains that an elected Member can vote on a planning application in the event of being predisposed. The reason for this is that the Member who is predisposed is in a position to have an open mind to the merits of the evidence that is given during the Committee meeting itself.

Declarations of Prejudicial Interest

4. In order to have a prejudicial interest, that interest must be a personal one, which is also financial or regulatory to the extent where a member of the public, in possession of all the facts would conclude that your personal interest (including those of your family and friends) was so significant that your decision on the matter would be affected by it. In such circumstances, the Advice Note says that you should take no part in discussion of the application, either inside or outside committee meetings. There is, however, provision for you to come to the meeting as a member of the public and request to address the Committee in the same way as any other member of the public is entitled to do.

Predetermination/ Bias and Dual Membership

5. Predetermination (which is coupled with “Bias” in the occasional paper) precludes the Member from voting on a planning application. Significantly, the Occasional Paper explains that Members “must not even *appear* to have already decided how they will vote at the meeting, so that nothing will change their mind.”

6. Members must ensure that the Code is strictly followed in respect of dual membership. Paragraph 11 of the Advice Note sets out that they must be able to demonstrate that they came to the debate with an open mind and that they have not formed a predetermined or fixed view.

7. Paragraph 12 of the Advice Note explains what Members should do whenever a future planning application is considered by a District/Parish Council, KCC Board or any other body of which they are a Member. Members should make a point of declaring that they will consider the matter afresh at the Planning Applications Committee meeting. They may also feel that is appropriate to ask that this declaration is minuted, although the Advice Note does not insist upon it.

8. Paragraph 13 of the Advice Note advises that Members should declare an interest when that item comes forward to the Planning Applications Committee. In order to be able to participate in the decision-making, Members must be in a position to declare that although they have participated in a previous discussion(s) on this matter, they have not yet reached a final conclusion and are not bound by the views of the Parish/ District Council/Board, etc.

9. The Advice Note recommends that any Member who does not believe that they can safely declare an absence of predetermination should treat this item as though they have a prejudicial interest and leave the meeting during discussion of that item or arrange to be substituted during the meeting. They can choose to speak as the Local Member but must make a clear declaration that this is what they are going to do (*see paragraph 10 below*). It is perfectly acceptable to return to the meeting as a Member of the Committee once consideration of that item has concluded as the declaration of prejudicial interest only covers the item itself and does not apply to the whole meeting.

10. Paragraphs 24-27 of the Advice Note permit those Members of this Committee who wish to speak as the Local Member to resume the role of Committee Member once that particular item of business has concluded. Local Members who choose to represent the views of their constituents on a particular item do not *intrinsically* have a prejudicial interest. They must, however, make a clear declaration of their intention to speak as the Local Member and explain that they will refrain from voting on that item.

Recommendation

10. I recommend that the Committee notes the Standards Committee's Advice Note 4 as set out in Appendix 1 to the report.

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Background Documents
None.