

By: Geoff Wild – Director of Law and Governance

To: Planning Applications Committee – 17 March 2009

Subject: DRAFT AMENDMENTS TO ADVICE TO MEMBERS ON THE APPLICATION OF THE CODE OF MEMBER CONDUCT TO DEVELOPMENT CONTROL

Classification: Unrestricted

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Summary: To advise Members of the Committee of draft amendments to the Standards Committee's Advice Note 4 on "the Application of the Code of Member Conduct to Development Control", particularly in respect of the Dual Membership provisions. These will be considered by Standards Committee following consideration by this Committee

FOR DECISION

Introduction

1. The draft revised 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. Draft amendments have been prepared in respect of the *Dual Membership* section of the Advice Note (paragraphs 11 to 15). These amendments take account of the revised *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 and its draft amendments have been prepared 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.

4. 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."

The draft amendments to the Dual Membership Section

5. Currently the Advice Note states that Members of this Committee should not vote on an application if they have previously done so in another place. The new Guidance Notes and the Occasional Paper are not so prescriptive and, accordingly it is recommended that this advice is removed.

6. The implications of this amendment are that Members must ensure that the remainder of the Code is more strictly followed in respect of dual membership. Draft paragraph 11 of the Advice Note sets out that you 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. Draft 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. Draft paragraph 13 of the Advice Note advises that Members should declare an interest when the 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.

Declarations of Prejudicial Interest

9. The Advice Note recommends that any Member who does not believe that they can safely declare an absence of predetermination should either declare a prejudicial interest and leave the meeting or arrange to be substituted and speak as the Local Member.

10. It has been the practice for Members of the Planning Applications Committee who do wish to speak as the Local Member to simply make a declaration of interest for that particular item, speak as the Local Member and then resume the role of Committee Member once that particular item of business has concluded. This practice does not conform to the Advice Note, which does not differentiate in any way within the category of Prejudicial Interest. I would therefore advise that a Member who declares a prejudicial interest *of any nature whatsoever* may attend the Committee meeting **either** as a Committee Member **or** as a Local Member, but not in both capacities.

Other Modifications to the Advice Note

11. The other draft amendments to the Advice Note simply reflect changes in circumstances since 2005, e.g. "Democratic Services" instead of "Council Secretariat."

Recommendation

12. I recommend that the Committee informs the Standards Committee that it endorses the draft Advice Note as set out in Appendix 1 to the report, subject to any comments made by Members during this meeting.

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Background Documents
None.