

By: Miss R MacCrone – Independent Chairman
Peter Sass - Head of Democratic Services and Local Leadership

To: Standards Committee – 27 April 2009

Subject: Advice Note 4 – Advice to Members on the application of the Code of Member Conduct to Development Control

Summary: To approve an amended Advice Note 4 for elected Members on the application of the Code of Conduct to Development Control in the light of guidance from the Local Government Association and the Standards Board for England.

Unrestricted

Background

1. At its meeting on 9 March 2005, this Committee considered and approved Advice Note 4 in relation to planning issues, to assist Members to play an active role in the proceedings of the Planning Applications Committee without breaching key aspects of the Code of Conduct. This advice note has now been amended (**Appendix 1**) and is submitted to the Committee for approval.

2. The Local Government Association (LGA), supported by the Standards Board for England, has issued a short but useful guidance note entitled “Positive Engagement – a guide for planning councillors (updated version)”. Separately, the Standards Board for England has also issued an occasional note entitled “Predisposition, Predetermination or Bias, and the Code”. Copies of both of these documents are attached as **Appendices 2 and 3**.

Predisposition versus Predetermination and Bias

3. The amended Advice Note 4 has been prepared with the distinction between predisposition and predetermination in mind. The Standards Board’s Occasional Paper defines both states of mind and explains that an elected Member can vote on a development control matter in the event of having a predisposed view, because this means that this is not a view that he or she has fixed prior to the meeting and they remain open-minded to decide the application on the merits of the evidence given at the meeting itself. Predetermination (coupled with bias), on the other hand, precludes a Member from voting on a planning matter, as this is, or would appear to be, a fixed view, so that nothing said or discussed at the meeting would change their mind.

Draft amendments to the Dual Membership section

4. Currently, the Advice Note states that Members of the Planning Applications Committee should not vote on an application if they have previously done so in another place. The revised proposed guidance and the Occasional Paper are not so prescriptive and, accordingly, it is recommended that this advice is removed.

5. The implications of this amendment are that Members must ensure that the remainder of the Code is followed more strictly in respect of dual membership. Paragraph 11 of the Advice Note sets out that Members of the Planning Applications Committee must be able to demonstrate that they came to the debate with an open mind and had not already formed a predetermined or fixed view.

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

7. Draft paragraph 13 of the Advice Note advises that Planning Applications Committee Members should declare an interest when the item comes forward to the 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/Town, District/Borough Council or Board, etc.

Declarations of Prejudicial Interest

8. 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 discussion of that item or arrange to be substituted and speak as the Local Member. Any declaration of a prejudicial interest only covers the item in question rather than the entire meeting. It is, therefore, perfectly acceptable to return to the meeting once consideration of that item has concluded.

9. Paragraphs 24-27 of the Advice Note permits those Members of the Planning Applications Committee who wish to speak as the Local Member to resume the role of a Committee Member once that particular item of business has concluded. Local Members who choose to represent the views of their constituents do not *intrinsicly* 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.

Consideration by the Planning Applications Committee

10. The draft Advice Note was discussed at a meeting of the Planning Applications Committee on 17 March 2009 and it was agreed that the Committee endorse the Advice Note. In addition, the Planning Applications Committee has asked the Head of the Planning Applications Group to inform Committee Members of the names of objectors to applications, in order to be able to identify whether they knew them well enough to decide whether to declare an interest.

Recommendation:

11. The Committee is invited to approve the revised Advice Note 4 (Appendix 1) and ask the Head of Democratic Services and Local Leadership to inform all Members accordingly.

Miss R MacCrone – Independent Chairman of the Standards Committee

Peter Sass – Head of Democratic Services and Local Leadership

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