

## **BATH AND NORTH EAST SOMERSET**

### **STANDARDS COMMITTEE**

#### **MINUTES OF THE MEETING OF THURSDAY, 23RD APRIL, 2015**

##### **PRESENT:-**

**Independent Members:** Susan Toland (Chair), Dr Cyril Davies (Independent Member)

**Parish Representatives:** Tony Crouch

**Bath and North East Somerset Councillors:** Sally Davis, Sarah Bevan and Malcolm Lees

**Officers:** Vernon Hitchman (Divisional Director, Legal and Democratic Services), Simon Barnes (Principal Solicitor) and Sean O'Neill (Democratic Services Officer)

#### **21 WELCOME AND INTRODUCTIONS**

The Chair welcomed everyone to the meeting.

#### **22 EMERGENCY EVACUATION PROCEDURE**

The Democratic Services Officer read out the procedure.

#### **23 APOLOGIES FOR ABSENCE AND SUBSTITUTION**

Apologies were received from Councillor Eleanor Jackson, Councillor Nigel Roberts, Deborah Russell and Veronica Packham.

#### **24 DECLARATIONS OF INTEREST**

Councillors Sarah Bevan, Sally Davis and Malcolm Lees declared that they are Members of the Development Control Committee.

#### **25 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIR**

The Chair announced that this would be the last meeting of the Committee to be attended by the current Monitoring Officer, as he was retiring at the end of May. Members thanked him for his support to the Committee.

#### **26 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS**

There were none.

#### **27 ITEMS FROM COUNCILLORS AND CO-OPTED AND ADDED MEMBERS RELATING TO THE GENERAL BUSINESS OF THE COMMITTEE**

There were none.

## **28 MINUTES OF THE MEETING OF 23 OCTOBER 2014**

These were approved as a correct record and signed by the Chair.

## **29 REVISED PLANNING CODE OF CONDUCT**

The Principal Solicitor presented the report. He explained that the current Code required revision because it was old (dating from 1998) and there had been important changes in the law since it was adopted. The most significant of these was that the courts and the Localism Act had taken a more relaxed view of the role of members of planning committees. It was now understood that members of planning committees did not operate in a vacuum, but were politicians who had been elected to represent their constituents and were entitled to have and express views on matters that affected those they represented. It was therefore recognised that it was proper for members to have a degree of involvement in pre-application discussions, so long as they maintained an open mind when they came to consider the application at committee. The new Code was intended to be simpler than the current Code. It had the twin aims of protecting members by giving them straightforward guidance on avoiding potential pitfalls and of protecting the Council from the possibility of legal challenges.

The draft Code would be considered by the Development Control Committee the following week, and presented to the new Council for formal adoption. He invited Members to comment on it.

In reply to questions from a Member he stated that:

- the revised Code was based on the model Code of Conduct produced by Lawyers in Local Government
- the revised Code was being submitted now, so close to the Council elections, in order that it would be in place before the new Development Control Committee was nominated after the elections – this would assist with member training

Members commented on the draft Code.

### Page 2 (Agenda page 14)

#### *“Fettering of Discretion in the Planning Process”*

A Member said that many people might be puzzled by the meaning of “*fettering*” in this context. The Monitoring Officer agreed that it was legalese and should be removed.

### Page 3 (Agenda page 15) and Page 4 (Agenda page 16)

*“Do make written notes of any conversations with Applicants, Developers and Objectors and pass them to officers for inclusion on the planning file. The same applies to emails and letters.”*

A Member said that there was so much lobbying of members of the Development Control Committee that strict compliance with this provision would be very difficult. The Principal Solicitor responded that the draft Code did make a distinction between ‘everyday’ contact and ‘significant’ contact. The Chair, however, pointed out that this provision did say “*any conversations*” and suggested that this needed to be qualified in some way.

*“Don’t agree to any meeting with applicants, developers or groups of objectors without first consulting with officers. Where you feel that a formal meeting would be useful in clarifying issues, you should seek to arrange that meeting yourself through a request to the Group Manager, Development Management who will organise it. He will ensure that an officer attends.”*

*“Don’t attend a planning presentation without requesting an officer to be present”*

A Member said that new councillors might have difficulty in interpreting these provisions in relation to parish council meetings, at which presentations and representations about planning applications were sometimes made, whereas more experienced councillors had a better sense of what was appropriate and what was not. She also wondered to what extent the Code applied to parish councils themselves. The Principal Solicitor replied that the Code applied primarily to members of the Development Control Committee, who actually determined applications. A Member said that Keynsham Town Council had adopted a Code for relations with major developers, who often approached the Town Council to discuss their plans.

A Member said that it could be difficult for a member to turn down an invitation to visit a site in their ward. The Principal Solicitor acknowledged this, but said that if members visited sites without officers present then they needed to be cautious. Another Member suggested that invitations to visit sites were most frequently received from objectors; impartiality required that the member should also speak to the applicant.

A Member suggested that Councillors should be provided with a form of words that they could use when meeting applicants or objectors to make it clear that they could not express an opinion about the merits of the application.

A Member expressed concern about residents in single-member wards, who would not be able to make representations about planning applications to their ward councillor if he or she was a member of the Development Control Committee and adhered strictly to these provisions.

#### Page 5 (Agenda page 17)

*“Do copy or pass on any lobbying correspondence you receive to the Group Manager and Case Officer at the earliest opportunity...”*

A Member again referred to the sheer volume of lobbying correspondence received by members of the Development Control Committee. Another Member pointed out the burden on the Group Manager and the Case Officer arising from a strict

implementation of this provision. The Principal Solicitor said the intention was to ensure that Planning Officers were aware that lobbying was taking place. The Monitoring Officer suggested that it would help members to apply the Code if the purpose of this provision were clearly stated; Members might then be able to make decisions to pass on correspondence based on the size of the application or the nature of the lobbyist etc.

#### Page 6 (Agenda Page 18)

*“Don’t request a site visit unless you are available to attend it....”*

A Member suggested that the Code should also provide for a substitute to attend as Members sometimes felt it was important that the committee visited the site, even if that Member was unable to attend.

*“Don’t enter a site which is subject to a proposal other than as part of an official site visit....”*

A Member stated that in rural areas it was common for objectors and applicants to ask local Members to view sites and it was sometimes difficult to say no without appearing unhelpful. The Principal Solicitor suggested that this could be changed to “Be cautious about entering a site...”.

#### Page 7 (Agenda page 19)

*“Do comply with section 38 of the Planning and Compulsory Purchase Act 2004 and make decisions in accordance with the Development Plan...”*

Members suggested that the provisions of section 38 of the PCP Act 2004 should either be explained, or the reference to section 38 should be omitted, if “*make decisions in accordance with the Development Plan...*” was legally complete.

*“Don’t vote or take part in the meeting’s discussion on a proposal unless you have been present to hear the entire debate, including the officer’s introduction to the matter.”*

A Member pointed out that comfort breaks were sometimes necessary, and might occur during the discussion of an application. He himself never went to a meeting without having thoroughly studied the papers and his decision was not simply based on the discussion at the meeting. A Member suggested that the Chair could highlight to a member returning from a short comfort break any significant issues that had been discussed during their absence. She added that members of the public would not necessarily know how thoroughly members had prepared for the meeting, and that their perception of the process would be strongly influenced by what they observed members do at the meeting. The Monitoring Officer agreed that a distinction should be made between a short absence, after which a member could be updated, and a longer absence, which would disqualify them from voting on that item.

A Member asked whether the Code applied to all planning applications, or only to those which came to Committee. The Principal Solicitor said that it applied to all applications, but particularly to those which came to Committee.

A Member asked about the position of members in relation to applications on which they had commented when they had first come before the Committee and which then came to Committee again. The Principal Solicitor said that this would be unlikely to amount to pre-determination, unless the member had expressed total opposition to the application under all circumstances. A Member said applications could change a great deal before they returned to Committee and that members must look at the resubmitted application as it then was, and approach it with an open mind.

A Member suggested that it might be helpful to include a provision that Members should exercise caution when dealing with people who were involved in, or had threatened, legal proceedings against the Council.

The Monitoring Officer suggested it would be helpful to number the paragraphs of the revised Code. Members agreed.

The meeting ended at 6.38 pm

Chair(person) .....

Date Confirmed and Signed .....

**Prepared by Democratic Services**