

ITEM NO: 7

REPORT TO:	STANDARDS COMMITTEE
DATE:	13 December 2011
REPORT OF:	Sandra Stewart - Borough Solicitor (Monitoring Officer)
SUBJECT MATTER:	PROBITY IN PLANNING
REPORT SUMMARY:	To consider a draft protocol setting out how the Council will maintain high standards of probity in its planning function.
RECOMMENDATION(S)	That the Panel considers the draft 'Probity in Planning' Protocol and recommends that full Council adopts it.
FINANCIAL IMPLICATIONS: (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
LEGAL IMPLICATIONS: (Authorised by Borough Solicitor)	As set out in the Report.
RISK MANAGEMENT:	The protocol will help the Council avoid judicial review proceedings and complaints about inappropriate standards of behaviour by Councillors by providing clear guidance about the standards expected.
LINKS TO COMMUNITY PLAN:	The protocol supports the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

ACCESS TO INFORMATION

NON-CONFIDENTIAL

This report does not contain information which warrants its consideration in the absence of the Press or members of the public

REFERENCE DOCUMENTS:	The Local Government Association document entitled 'Probity in Planning' can be found at: http://www.lga.gov.uk/lga/aio/1940404 The background papers relating to this report can be inspected by contacting the report writer, Paul Turner, Deputy Borough Solicitor by:
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1. INTRODUCTION

- 1.1 In June 2011 the Standards Committee considered a draft planning protocol and asked for consultation to be undertaken on it. The draft protocol was largely declaratory of the current good practice and will provide assurance to external regulators, developers and the public that the Council will act with the highest standards.
- 1.2 Planning issues can be very contentious. Planning decisions always involve balancing competing factors in the public interest. Planning issues can have a great impact on people's lives and businesses and can have a large financial impact on landowners and the public alike.
- 1.3 The Speaker's Panel, as the committee which makes planning decisions, largely regulates its own behaviour and its own procedures, and there is no evidence of widespread or significant lapses in standards of behaviour in the planning arena at Tameside.
- 1.4 The aim of the draft protocol is to set out the rules by which the Panel operates in a single document. Councillors would clearly know what was expected of them and when to seek advice and the public would be better able to understand issues which may be counter intuitive to them (such as the reason why members of the Speaker's Panel usually don't get involved in planning issues in their ward). They would also know who to approach if they had a concern about the planning system.
- 1.5 In addition, the protocol can help explain how the planning process works to the public and to new councillors.
- 1.6 However, some of the laws around standards of behaviour – particularly the law of predetermination and bias - is judge made law. Whilst the Localism Act 2011 will make it harder to challenge decisions on the grounds of predetermination by Councillors, it is as yet unclear how the new law will be interpreted and will not eliminate challenges on the law of bias. This area of law has been the subject of a significant number of court cases over the last few years. The protocol will need to be regularly reviewed to keep it up to date so it provides the best possible advice for councillors and officers.
- 1.7 The draft protocol contains written rules on lobbying which should provide enhanced clarity to Councillors.
- 1.8 The Local Government Association has published a guidance document on the subject of probity in planning. The draft protocol has been written in consideration of this advice.

2. THE DRAFT 'PROBITY IN PLANNING' PROTOCOL

- 2.1 The protocol sets out the role of the Speaker's Panel and sets out guidance on a number of topics:

- (a) **When Councillors should withdraw from the meeting under the Code of Conduct.**

Councillors should not be present in the room when an item of business in which they have a personal and prejudicial interest is being considered (although they can address the committee if the public are also allowed to. Councillors must however leave the room as soon as they have addressed the committee). Failure to comply would be a breach of the code of conduct.

Participating in an item of business when a councillor has predetermined the matter or is biased would be conduct likely to bring the office of councillor into disrepute and so be a breach of the code of conduct.

(b) **When Councillors should withdraw from the meeting under the law of bias or predetermination.**

This is whenever the Councillor risks being considered to be biased in a matter or to have made up his or her mind before the meeting. It is acceptable for councillors to have a predisposition to vote in a particular way, but they must be prepared to listen to the debate at the meeting and be prepared to change their mind.

(c) **How meetings between the Council and Developers should be conducted.**

It is important that discussions between councillors and developers take place in an open and transparent way to avoid giving rise to a suspicion that secret deals are being done or that developers have inappropriate access to councillors.

(d) **What counts as lobbying and how Councillors should respond if they are lobbied?**

Again, it is important that all lobbying is recorded so the public know what is happening.

(e) **The role of Councillors and officers.**

Councillors and officers have separate but complementary roles. It is important that each knows the other's role.

(f) **What happens where planning issues are raised at District Assembly meetings?**

Sometimes planning issues are raised at District Assembly meetings and it is important that members of the Speaker's Panel don't express settled views on the planning merits of an application if they intend to vote on the application when it comes before the Panel.

(g) **The importance of giving reasons when the Panel disagrees with officers' recommendations.**

It is a legal requirement for the decision maker on a planning application to give reasons. Planning reports give reasons for the recommendation and it is usually assumed that Councillors have adopted that reasoning when they make a decision (although clearly the Panel may vote to make a decision on different reasons.

The Panel are entitled to vote against an officer recommendation but if they do it is imperative that they give reasons for their decision since if they do not there is no mandate for any particular reasoning.

(h) **That there is no whipping in planning matters.**

The Ombudsman has criticised local authorities where councillors have voted on party political lines on planning applications since every member of the committee is to exercise his or her independent planning judgement on the application. However in forming a view they should have regard to the views expressed by their colleagues.

2.2 Most of the code simply reflects the law, or the code of conduct, or how business is undertaken at Tameside. It has been written after considering the guidance produced by the Local Government Association.

3. CONSULTATION

3.1 The draft protocol was considered by the Council's Speaker's Panel (Planning) on 23 November 2011. Most of the code was favourably received by members of the panel.

3.2 The Chair of the panel and some members were opposed to the inclusion of paragraph 4.3(b) in the draft protocol. This says that if a member of the Panel has been approached by an applicant or an objector they must:

“Immediately notify the council’s Head of Housing and Planning of the fact that such an approach has been made, ensuring that a record is made.”

3.3 It was also felt that this somewhat overlaps with 4.4 which says that

“Where a member of the Speaker’s Panel receives written representations or comments directly in relation to a planning application or development plan proposal (this includes emails), members must immediately pass the correspondence to the Council’s Head of Housing and Planning, in order that those representations may be taken into account in any report to the Panel or, where received too late, can be referred to by officers at the Panel meeting. No response should normally be made by the Councillor concerned.”

3.4 Whilst it is correct that there is some overlap, paragraph 4.4 does not require a councillor to inform the Head of Housing and Planning of personal approaches, meetings or telephone conversations. Some panel members felt that this requirement was not appropriate and the example was given of not wishing to name a constituent who was opposed to a planning application but was afraid of being identified as an objector. Paragraph 4.3(b) does not of course require the Councillor to give the name of the person making the approach (although this would normally be expected). It is therefore considered that there is enough flexibility in the protocol to deal with this situation sensitively.

3.5 If paragraph 4.3(b) is removed there would be no requirement for panel members to let the Council know if they had had extensive meetings with a developer or an objector.

3.6 The view was expressed that if a panel member received an email about a planning application he or she would not necessarily need to inform the planning department. However, it would be of significant concern if issues were raised or views were expressed in a direct communication to a panel member, particularly if those representations were not raised in an objection sent directly to the planning department. It is considered very important that any representations received directly by councillors are passed to the planning department so that they can be addressed. A decision failing to take account of relevant representations is likely to be unlawful.

3.7 It could be argued that people who make representations to councillors rather than to the planning office have only themselves to blame. However, a court is unlikely to accept this argument. Whilst those familiar with the planning system would know that representations should be submitted to the planning department, not everyone is familiar with the system. It would be very easy for someone who had sent a representation to a panel member to succeed in an application for judicial review if that representation was not passed onto the Panel and addressed by the planning officer.

3.8 In conclusion it is recommended that both paragraphs 4.3(b) and 4.4 remain in the code to protect Members and reflect the position of the Courts. It should be noted that Members would have discharged their duty if they advise the Clerk or the Solicitor to the Speaker’s Panel.

3.9 It was also felt that the obligation to inform the Head of Housing and Planning immediately was too onerous. It is not suggested that members of the panel should be constantly checking emails with a view to forwarding them to Councillors and it is recommended that the word “immediately” should be replaced with “promptly” in paragraphs 4.3(b) and 4.4.

4. LOCALISM ACT 2011

- 4.1 Although the Localism Act 2011 will, when brought into force, abolish the statutory code of conduct for councillors, councils will retain a statutory duty to promote and maintain high standards of conduct amongst councillors and co-opted members. Councils will have to have their own code of conduct. The relevant parts of the planning protocol could form the basis of a local code. This is something which the Committee will need to consider over the coming months.
- 4.2 Further, failure to disclose an interest will be a criminal offence if that interest is required to be registered under new regulations to be made by the Secretary of State. No draft regulations are yet available. Any prosecution would be undertaken by the Police and the Crown Prosecution Service, not by the Council.

5. RECOMMENDATION

That the Panel considers the draft 'Probity in Planning' Protocol and recommends that full Council adopts it.

TAMESIDE METROPOLITAN BOROUGH COUNCIL

PROBITY IN PLANNING

CODE OF GOOD PRACTICE FOR COUNCILLORS AND OFFICERS
DEALING WITH PLANNING MATTERS**1. INTRODUCTION**

- 1.1 The Council has a commitment to high standards of behaviour by officers and councillors.
- 1.2 This is particularly important in the planning system where decisions involve weighing 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 have been elected to make decisions in their judgment of the public interest. They must neither give undue or improper 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 the Speaker's Panel.***
- 1.3 The Statutory Code of Conduct contains provisions requiring Councillors to declare interests and withdraw from consideration of items of council business, requiring them not to improperly confer an advantage or disadvantage on anyone else and requiring them not to bring themselves or the office of councillor in disrepute.

2. REGISTRATION AND DECLARATION OF INTERESTS

- 2.1 The Code of Conduct requires a councillor with a personal and prejudicial interest to withdraw from the meeting during the consideration of a planning application in which a Councillor has a personal and prejudicial interest.
- 2.2 A Councillor has a personal interest where it affects the Councillor's well being or financial position or relates to any of his or her registered interests (this includes membership of outside bodies nominated by the council such as Transport for Greater Manchester Committee or New Charter). They also have a personal interest if affects the well being or financial position of the Councillor, his family, friends close associates, or any of their business interests or employers.

Declaration of Interests under the Code of conduct

- 2.3 A personal interest becomes a personal and prejudicial interest if a member of the public who knew all the facts considers that the interest would be likely to affect the Councillor's judgment of the public interest.
- 2.4 It should be noted that a Councillor is subject to the code of conduct whenever they address the committee – even if they are objecting to their neighbour's planning application and wish to act in a private capacity. If a Councillor has a personal and prejudicial interest in a planning application he or she may address the committee if they would be allowed to even if they were not a Councillor, but they must leave the room as soon as they have finished speaking and they have been asked questions.
- 2.5 The Code would also prevent a councillor with a personal and prejudicial interest from representing local views or getting involved in the processing of the application. In such

cases Councillors should avoid the appearance of seeking preferential treatment by avoiding using their position as a Councillor seeking to discuss the proposal with officers or members in circumstances when other applicants or objectors would not have the same opportunity to do so.

- 2.6 The Code would not apply if attending a meeting in a purely private capacity rather than as a representative Ward Councillor, but in many cases – even on social occasions – you can be acting as a councillor if you start to discuss council business, particularly with people who have an interest in the matter (eg applicants or objectors). It can cause difficulties if other people know you are a councillor and you discuss a planning matter, particularly if councillors start expressing firmly held opinions. If this situation might arise, please seek guidance from the Borough Solicitor.
- 2.7 Members who are company directors or charity trustees have legal duties and responsibilities to these organisations. Accordingly, if the Speaker's Panel is considering a planning application submitted by an organisation where a member of the Panel is a director or trustee, that member will have a personal and prejudicial interest. They should declare this and withdraw from the meeting and avoid involvement with the matter. This applies even if the Councillor has been appointed to the organisation by the Council.
- 2.8 Where, however the other body is only a consultee on a planning application, the member will have a personal interest. They must also consider if they have a personal and prejudicial interest - which will prevent them participating. Whether or not the interest is personal and prejudicial will depend on a number of factors such as whether the consultee has expressed a strong view on the application and whether the application has any consequences for the consultee. If the consultee has objected then this is likely to amount to a personal and prejudicial interest, particularly if the Councillor was involved in the decision to object.

Predetermination

- 2.9 If a member, in advance of the Speaker's Panel or other decision-making meeting, has come to a firm view on the matter to be decided, they must not participate since they would not be able to demonstrate that during the consideration of the item at the Panel they had approached the decision with an open mind. Councillors must have a mind which is at least ajar. If they participate in a decision with a closed mind they might place the Council in danger of judicial review because of the councillor has "predetermined" the matter.
- 2.10 The test in such cases is whether, from the point of view of the fair minded and informed observer, there is a real possibility that a member of the Panel was biased (as a result of some conflict of interest) or that it is clear that they will approach (or have approached) the decision with a closed mind and that they had made up their mind before the meeting and weren't prepared to listen to the views expressed at the meeting of the panel.

Speaking on planning applications when you are unable to take part in the decision

- 2.11 A member of the Panel who is unable to participate in the decision may still exercise their right to represent the views of local electors by speaking at the Panel as a Ward Member. If so, the member should advise the Chair in advance and remove themselves to the public gallery from the commencement of the item until they have spoken and then, having spoken, they must withdraw from the room.

3. INFORMAL MEETINGS OR DISCUSSIONS BETWEEN DEVELOPERS AND COUNCILLORS WHO ARE ON THE SPEAKER'S PANEL

- 3.1 To ensure a full understanding of proposals and to help developers understand the Council's planning and economic objectives, there will be occasions when it will be appropriate for officers and appropriate Members to meet with potential developers and others.
- 3.2 The following general principles should normally apply in such cases:
- (a) The meeting should be prearranged and be organised by, or through, a senior planning officer.
 - (b) The meeting should normally take place at the Council Offices,
 - (c) Meetings should not normally take place without the presence throughout of Council Planning Officers or Senior Managers.
 - (d) The purpose of the meeting is to exchange preliminary views. At the meeting it must be made clear that Councillors will need to consider the proposal in full at the Speaker's Panel and are not seeking to express a decided view one way or the other and indeed that they cannot do so until there is a detailed proposal which has been the subject of full consultation and discussion.
 - (e) A record of the meeting shall be made by the Council's officers. The record must include the persons present and the nature of the discussions, including any advice given.
 - (f) If the proposals result in a report to the Speaker's Panel, the record of the discussion should be made available for public inspection and form a background paper to any report to the Panel.
- 3.3 Any meetings or contacts with member of the Speaker's Panel which do not comply with these provisions will be deemed to be lobbying within part 4 of this Code of Practice.

4. LOBBYING – MEMBERS OF THE COUNCIL'S SPEAKER'S PANEL

- 4.1 This section of the Code of Good Practice applies only to members of the Speaker's Panel. It is intended to ensure that high standards are maintained when planning decisions are taken. The Council wishes to ensure that the integrity of the decision-making process is not damaged or perceived to be damaged as a result of people lobbying members of the Panel. This part of the Code of Practice is designed to ensure that any lobbying is recorded and is public knowledge. It is also designed to help members decide the appropriate response to lobbying. Lobbying of the members of the Council who are not members of the Speaker's Panel is governed by section 6 of the Code.
- 4.2 Members of the Panel should discourage any applicant or agent or other interested party from approaching them in any way in relation to any individual planning application, or any other matter which might give rise to a planning application. This includes consideration of site-specific policy matters and enforcement issues. If an approach is received, the member shall seek to avoid giving any commitment or the impression of a commitment, or say that they hold any particular view on the development of the site or a particular planning application.

- 4.3 If an approach is received by a member of the Speaker's Panel from an applicant or agent or other interested party in relation to a particular planning application, or any matter which may give rise to a planning application, the member should:
- (a) As far as possible avoid any discussion about the application. Inform the applicant or agent or interested party that such an approach should instead be made to the Council's planning officers;
 - (b) Promptly notify the council's Head of Housing and Planning of the fact that such an approach has been made, ensuring that a record is made, and,
 - (c) Disclose the fact of such an approach if and when, the Panel considers the application or proposal.
- 4.4 Where a member of the Speaker's Panel receives written representations or comments directly in relation to a planning application or development plan proposal (this includes emails), members must promptly pass the correspondence to the Council's Head of Housing and Planning, in order that those representations may be taken into account in any report to the Panel or, where received too late, can be referred to by officers at the Panel meeting. No response should normally be made by the Councillor concerned.
- 4.5 Where a member of the Speaker's Panel has had significant contact (see para 4.7) with an applicant, agent or interested party, that Councillor should consider whether it is appropriate for them to participate in the meeting. They should consider whether a fair minded and independent observer would consider that there was a real possibility of bias or that the Councillor has made up his or her mind on the application before the meeting.
- 4.6 Members of Speaker's panel can be placed in a difficult position if a controversial application is submitted in their ward, particularly if a lot of lobbying takes place. If the member responds to lobbying by expressing clear and decided support for a particular outcome – or even campaigning for it – it will be very difficult for that member to argue when the Panel comes to take a decision on the application, that he or she has carefully weighed the arguments presented at the meeting. In these circumstances participation by the Councillor could give rise to an application for judicial review and the proper course of action for such a member would be to make an open declaration and not vote. It may be best to ask other members of that ward to communicate with constituents' concerns, although this may not always be possible.
- 4.7 It must be recognised that it is a proper function of Councillors to maintain regular contacts with their constituents on a wide range of local issues. "Significant contact" means contact over and above normal constituency enquiries by telephone and personal contact. Only in rare and exceptional cases will contact with constituents with observations on planning applications result in a member being advised to withdraw from the meeting.

For the avoidance of doubt, the following do not by themselves amount to "significant contact":-

- Attendance at presentations by developers falling under this code of guidance.
- The receipt of unsolicited written representations, whether together with other members of the Panel or not (provided these communications are forwarded to the planning department in accordance with this policy).
- The public expression of predisposition in relation to a particular matter where this does not amount to evidence that the Councillor has made up his or her mind (although great care must be taken when doing this because it can give an undesirable impression to people involved in the application).

- Listening to or receiving views from residents or other interested parties provided these are recorded.

4.8 Councillors should consider seeking advice from the Borough Solicitor, the Council's monitoring officer, in appropriate cases.

4.9 Members of the Speaker's Panel and planning officers should minimise their social contacts with developers and agents and refrain altogether from such contacts when developments are known to be contemplated or applications are being proposed, for which controversial decisions are likely to be needed.

4.10 Members of the Speaker's Panel should not generally enter any private premises which are the subject of, or affected by, a planning application or known by them to be likely to become the subject of, or affected by, such an application for any purpose in connection with the application, except in the course of a site visit accompanied by officers. Lobbying should not take place during the course of a site visit.

4.11 Gifts and hospitality should not be accepted from planning applicants or people acting on their behalf.

5. DISTRICT ASSEMBLY MEETINGS

5.1 Matters are occasionally raised at District Assembly meetings which may have an implication for planning applications, which will then be determined by the Speaker's Panel. There is, therefore, a risk that members of the Speaker's Panel might be thought to have prejudged the fate of a planning application by having attended a District Assembly meeting where an issue has been raised.

5.2 When attending District Assembly meeting where matters concerning planning applications or potential applications are raised, members of the Speaker's Panel should:-

- (a) Seek to avoid expressing a settled view on a planning application.
- (b) Consider abstaining on any vote at the District Assembly on that item (and if the District Assembly is deciding whether or not to support a planning application they must abstain and make it clear that they are not participating in the vote if they wish to participate in the decision at the Speaker's Panel).
- (c) Explain to the meeting that they are a member of the Speaker's Panel (Planning) and that as a result they need to keep an open mind on the application and will only make up their mind finally when the application comes before the Speaker's panel. and have this recorded in the minutes, and,
- (d) Be permitted to remain in the meeting.

5.3 In certain circumstances, members of the Speaker's Panel may feel so strongly about an application that they wish to make representations at a District Assembly or vote on a planning issue. If they do so, they must then avoid consideration of the item at Speaker's Panel and they should leave the room during the consideration of that item.

6. LOBBYING OF MEMBERS GENERALLY

6.1 Members who are not on Speaker's Panel have greater flexibility to lobby on behalf of their community but they must still consider this code.

- 6.2 Where an elected member attends a meeting of the Speaker's Panel (other than as a member of the Panel) they must:
- (a) disclose to the meeting if they have personally been lobbied or had contact with an applicant, agent, or objector, in connection with the application.
 - (b) not take part in the discussion of the item as if they were a member of the Panel – instead they may address the panel in a similar manner to a member of the public.
 - (c) sit in the public gallery, except while making any presentation and answering any questions from the Panel.
- 6.3 Where an approach (over and above that arising from normal constituency duties) has been received by an elected member (not being a member of the Speaker's Panel) from an applicant agent or other interested party in relation to a planning application or any matter which may give rise to a planning application, that member should immediately notify the Head of Housing and Planning of the fact that such an approach has been made, identifying the site, the nature of the approach by whom it was made and the action taken by the member concerned. This will enable any such information to be properly considered and included in the report to the Panel
- 6.4 In discussions between members generally and members of the Speaker's Panel (at a party, group meetings or other informal occasions) and at District Assemblies, members should have regard to:-
- (a) The principles governing the Code of Conduct
 - (b) The principles governing the conduct of members of the Speaker's Panel set out in Section 4 above.
 - (c) The obligations placed on members of the Speaker's Panel not to give commitments in relation to planning applications or local development scheme proposals prior to consideration at the Speaker's Panel following full officers' reports and presentations, if any.

7. OFFICER REPORTS

- 7.1 Public concerns about other local authorities have led to public inquiries which have found serious shortcomings in the way in which planning applications were reported to Committees. These gave rise to criticisms of inadequate consideration of the issues, inconsistency of decision-making, unclear or non-existent reasoning behind a recommendation and at some times there was no recommendation at all. These failings led to public concern and a loss of confidence in the planning process.
- 7.2 Councillors and officers have different but complementary roles. Both serve the public but councillors are responsible to the electorate, whilst officers are responsible to the council as a whole. Officers advise councillors and the council and carry out the council's work. They are employed by the council, not by individual councillors. It follows that instructions may only be given to officers through a decision of the council or its executive or a committee. Any other system which develops is open to question. A successful relationship between councillors and officers can only be based upon mutual trust and understanding of each other's positions. This relationship and the trust which underpins it must never be abused or compromised.
- 7.3 To avoid any such problems:-

- (a) Reports should be accurate and must cover, amongst other things, the substance of any objections and the views of those consulted and all member representations.
- (b) Reports must include a clear explanation of the development plan and other planning policy issues, site or related history and any other material considerations.
- (c) Reports should have a written recommendation. Oral reporting (except to present or update a report) should be avoided and carefully minuted when it does occur.
- (d) Reports should contain technical appraisals, which clearly justify a recommendation.
- (e) If the report's recommendation is contrary to the provisions of the development plan, the material considerations that justify recommending departure must be clearly stated.
- (f) Conditions recommended must be clearly drafted and enforceable.

7.4 Officers should meet with the Chairman and Vice Chairman of the Speaker's Panel to discuss the contents of a report to Panel, as soon as is reasonably practicable and in any event before the time of the meeting. The Chairman, Vice Chairman and interested members should forewarn officers of any cases where they are aware of potential differences of opinion between officers and members and the reasons why.

7.5 Ward, and other relevant members must be consulted on any significant changes to applications, e.g. changes of house type or height of buildings on plans they have previously seen or approved.

7.6 All members of the Council are permitted at any time to contact the relevant planning officer in relation to any planning application or planning proposal.

7.7 Members of the Speaker's Panel should not attempt to influence the contents of an officer's report or any observations/advice given on such a matter. However, any comments from members should be included in full in the report. To facilitate this, members should submit their comments in writing and in good time.

7.8 Any criticism by members of the Speaker's Panel or by members generally of planning officers should be made in writing to the Head of Housing and Planning and not to the officer concerned. Members should try to avoid public criticism of officers since officer are unable to answer back.

8. PROCEDURE AT SPEAKER'S PANEL

8.1 Composition of the Panel

- (a) The Council will appoint the membership of the Panel, based on the rules of political balance.
- (b) No Executive Member may normally be a member of the Speaker's Panel.
- (c) The Speaker's Panel will have one Chair and two Deputies, the Chair and one Deputy from the majority group and one Deputy Chair from an opposition group, subject to the rules of political balance.
- (d) The Chair of Council business should normally be a member of the Speaker's Panel.

8.2 Whipping.

The Whip shall not apply to any of the political groups on their respective members to any item of Panel business.

8.3 Decision making

- (a) Decisions by the Panel must be taken, and should be seen to be taken, in a non-party political manner within the framework of the law, Council policy and the Constitution.
- (b) No political meetings shall take place concerning the business of the Panel.
- (c) Each member of the Panel will act in accordance with protocols and guidance that the Council may determine.

8.4 Briefings for members of the Panel may take place shortly before the time of the public meeting. The purpose of such briefings is simply to update members of the Panel on information that has been received since the agenda was prepared. The Briefing is not to be used for discussing the merits of applications or for making any decisions.

8.5 Officers will try to ensure that information which has come to light since the writing of a report to the Panel can be dealt with at the meeting by written addendum or by comment at the meeting. However, where officers, members, applicants or objectors are unable to properly deal with late information or issues arising, the Panel should defer the item to enable the information to be dealt with properly.

9. PUBLIC SPEAKING AT SPEAKER'S PANEL

9.1 Applicants or objectors will generally be allowed to make an oral presentation lasting up to five minutes to the Panel. This is subject to advance notice, in writing, being given to the Head of Housing and Planning. Where one side has requested an opportunity to address the Panel, then the other side will be informed of this and given the opportunity to attend also. Generally, only one speaker in favour and one against will be permitted at the Panel. Once Speaker's have made their contribution at a meeting of the Panel, they will not be allowed to further address the Panel – even if the item is deferred to a future meeting. Speaker's at the Panel should be prepared to answer reasonable questions from members of the Panel.

9.2 Councillors for the Ward where planning applications are will, subject to the discretion of the Chair and to the rules under this code, be entitled to address the Panel for up to five minutes.

10. GIVING REASONS FOR DECISIONS

10.1 The law requires that the Council must give reasons for its decisions.

10.2 The law also requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise. This gives rise to two main issues:-

- (i) All applications which are not in accordance with the development plan, be identified as soon as possible. They must be advertised as such, as required by law, and,
- (ii) If it is intended to approve such an application, the material considerations leading to this conclusion must be clearly identified and how these considerations justify

overriding the development plan, must be clearly demonstrated. The application may then have to be referred to the Secretary of State depending on the type and scale of the development proposed. If the officer's report recommends approval of the departure, the justification for this should be included in full in that report.

- 10.3 Where the Panel appears minded to make a decision based on non-material considerations, or seriously contrary to national or local planning policy, the Chair has power to defer the item. This will allow a report to the next meeting of the Panel looking at the consequences of the proposed decision and suggesting and obtaining reasons for it, together with any conditions or section 106 agreements required. This period will also give an opportunity to correct any erroneous statements made during the presentation or debate and officers should include these in any subsequent report.
- 10.4 If the Panel makes a decision contrary to the officer's recommendation (whether for approval or refusal), a detailed minute of the Panel's reasons should be made and a copy placed on the application file. Officers should also be given an opportunity to explain the implications of the contrary decision. The Courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant rarely provide such grounds.

11. APPEALS

- 11.1 The Chair and Deputy Chair of the Speaker's Panel shall be advised of all planning appeals. Members shall also be advised of any appeals in their wards.
- 11.2 The Chair and Deputy Chair of the Speaker's Panel, together with any members who wish to contribute, may discuss the conduct of the appeal with the Head of Planning and the Borough Solicitor as soon as reasonably practicable after the Council has received a planning appeal.
- 11.3 Following consultations with the Head of Housing and Planning and the Borough Solicitor, the Chair of the Speaker's Panel shall consider whether it is appropriate for a Member or Members to give evidence (in writing or in person) on behalf of the Speaker's Panel at any planning appeal hearing.
- 11.4 Where the Speaker's Panel, when voting on any planning matter, vote in a manner inconsistent with any advice of officers or recommendation, consideration shall be given as to whether it is appropriate for an Officer of the Council to conduct the appeal.
- 11.5 The Borough Solicitor and Head of Housing and Planning shall ensure that the Chair and Deputy of the Speaker's Panel are regularly briefed on the progress of all planning appeals.
- 11.6 All appeal decisions are reported to the Speaker's Panel.

12. GENERAL

- 12.1 The Head of Housing and Planning shall at all times ensure that the Chair, Deputy and Members of the Speaker's Panel and relevant Executive Members are regularly briefed on all relevant planning matters.
- 12.2 Where Members and/or officers of the Planning Service are involved in direct discussions with a developer (potential or otherwise) or their agents whether at meetings or through other correspondence, these discussions/meetings shall be logged. The log shall be available to Members and officers at all meetings of the Speaker's Panel. The log shall

contain a summary of the actual discussions, the time, date and place of any discussion and who was present.

- 12.3 The Executive Cabinet or the relevant Executive Member may nominate one or more Members to accompany individual planning officers when meeting with developers and prospective developers of significant developments.
- 12.4 There is a duty on officers to consult Members appropriately, having regard to the particular category of applications. In so doing officers should:
- Explain proposals and advise Members of changes. Where Members have raised issues, they must be kept informed of progress and advised of when a decision is likely to be made.
 - Produce minutes of the meeting and discussions with Members and provide Members with a copy of the minutes.