

LOBBY GROUPS, DUAL HATTED MEMBERS AND THE CODE OF CONDUCT

Report By: County Secretary and Solicitor

Wards Affected

County-wide

Purpose

1. To note the guidance for members published by the Standards Board for England in relation to lobby groups, dual-hatted members and the Code of Conduct.

Background

2. At its meeting on 17 January 2003, the Council agreed to adopt a Planning Code of Conduct based on government guidance and practical experience. The Code now features as Appendix 13 in the Council's Constitution.
3. Paragraphs 33 and 34 of the Planning Code of Conduct deal with "planning committee members who serve on parish and town councils".
4. The relevant text is repeated below for ease of reference.
 33. *Some Councillors will be Members of Parish or Town Councils as well as Herefordshire Council Councillors. This situation can also present problems where the Parish or Town Council is consulted on planning applications. Whilst the comments of the Parish Councils should concentrate on local issues this is often the stage when Herefordshire Councillors can come under pressure to indicate their support or objection to a particular proposal. Of particular concern is the potential for a conflict of interest arising when a Member of both Councils votes on an application at a Parish or Town meeting prior to the relevant Planning Committee meeting. It is quite conceivable that a Councillor in this position could end up voting in a different way when all the relevant information is made available in the Officer's report.*
 34. *In order to avoid this potential conflict, it would be preferable for Councillors not to serve on Parish or Town Council's planning committees. If they cannot avoid that, then they should not vote or say anything which would create the impression that they have already made up their minds prior to the relevant Herefordshire Council's planning meeting. In this way they will avoid being part of the formal process of submitting representations on planning applications to the Council, and so demonstrate their impartiality. Those Members who have indicated their view on an application or have voted should declare an interest when an application comes before the relevant Planning Committees and leave the room when it is discussed.*

5. The advice is clear that members are advised to “not vote or say anything which would create the impression that they have already made up their minds prior to the relevant Herefordshire Council’s planning meeting”.
6. This advice was based on guidance published by the Local Government Association “Probity in Planning (Update) The Role of Councillors and Officers – Revised Guidance Note on Preparing a Local Code of Good Practice for Councillors and Officers dealing with Planning Matters”.
7. This note was published by the Local Government Association after consideration by members of the Association’s Planning Executive; the Standards Board for England; the Department for Transport, Local Government and Regions; the Council Planning Officers Society; and the Association of Council Secretaries and Solicitors in 2002.
8. Its aim was to ensure the preservation of the integrity of the planning system as open and fair to all parties. Its advice was clear that if a member, in advance of the decision making planning meeting had taken a firm view on a planning matter, either in meetings of another body or otherwise, they would not be able to demonstrate that in participating in a decision, all the relevant facts and arguments had been taken into account – they would have fettered their discretion.

The Standards Board for England Guidance of September 2004

9. The Standards Board for England have recently published guidance in relation to these matters. In the section entitled “dual-hatted members” the guidance confirms that the Code of Conduct does not automatically prevent members from considering the same issue at more than one tier of local government, including speaking and voting in both tiers.
10. It advises on page 15 that if an issue comes up for discussion at both the parish and district level and a member sits on both authorities they should:
 - *“at the parish level, make it clear that you will reconsider the matter at district level, taking into account all relevant evidence and representations at the district tier;*
 - *at the district level, declare a personal (but not prejudicial) interest arising from your membership of the parish council which has already expressed a view on the matter, and make it clear that the parish council’s view does not bind you and that you are considering the matter afresh.*

*These guidelines apply even if the proposal has a direct impact on a particular location. For example, to continue the example of a parish and district councillor, there is no objection, in principle, **to you speaking and voting** on issues in the district council’s development plan that particularly affect your parish. Of course, you must still consider if you have a prejudicial interest arising from the impact of the proposals on your well-being or financial position. In such circumstances, it would not be appropriate to rely on the exemption in paragraph 10(2) of the code.”*

Conclusion

Further information on the subject of this report is available from
Marie Rosenthal, County Secretary and Solicitor on (01432) 260200

11. The Committee are asked to consider whether or not it would wish to recommend a revision to the current Planning Code of Conduct at Herefordshire which advises that Herefordshire Councillors not vote or say anything which would create the impression that they have already made up their minds prior to the Herefordshire Council's planning meeting.

RECOMMENDATION

THAT **the Committee consider the current conflict between the Council Planning Code of Conduct and the SBE Guidance and decide how best to proceed.**