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Our ref:  
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Date: 22 March 2010

**NOTICE OF MEETING:**

**STANDARDS COMMITTEE**

**DATE: TUESDAY 30 MARCH 2010**

**TIME: 7.30PM**

**PLACE: COUNCIL CHAMBER, COUNCIL OFFICES, KNOWLE GREEN, STAINES**

TO: ALL MEMBERS OF THE STANDARDS COMMITTEE

***Councillors:***

T.W. Crabb  
C.A. Davis  
A.P. Hirst  
D.L. McShane  
E. O'Hara  
G.F. Trussler

***Independent Members:***

Mr. M. Litvak (Chairman)  
Miss Sue Faulkner (Vice-Chairman)

**EMERGENCY PROCEDURE**

In the event of an emergency the building must be evacuated. All Members and Officers should assemble on the Green adjacent to Broome Lodge. Members of the Public present should accompany the Officers to this point and remain there until the Senior Officer present has accounted for all persons known to be on the premises.

**THE LIFT MUST NOT BE USED.**

If you would like a copy of this agenda or the attached reports in a larger print please contact Liz Phillis (01784) 446276 or e-mail [l.phillis@spelthorne.gov.uk](mailto:l.phillis@spelthorne.gov.uk)

## A G E N D A

### 1. APOLOGIES

To receive any apologies for non attendance..

### 2. MINUTES

To confirm the minutes of the meeting held on 22 September 2009 (Copy **attached**)

### 3. DISCLOSURE OF INTERESTS

To receive any disclosure of interests from members.

### 4. REVIEW MEMBERS ICT SECURITY POLICY

To review progress on the security policy which was discussed by the committee at its meeting on 22 September 2009. Helen Dunn the ICT Manager will be in attendance.

### 5. POLITICAL RESTRICTIONS ON LOCAL GOVERNMENT EMPLOYEES

To consider the **attached** report from the Head of Human Resources and the Monitoring Officer.

### 6. REVIEW OF THE PLANNING CODE

To consider the report of the Monitoring Officer. **To Follow**

Heather Morgan the Head of Planning and Housing Strategy together with the Chairman of the Planning Committee, Councillor H Thomson will join the Standards Committee to assist in the review of the Code.

#### IMPORTANT PUBLIC NOTICE

#### MOBILE TECHNOLOGY – ACCEPTABLE USE

Use of mobile technology (e.g. mobile telephones, Blackberries, XDA's etc.) in Council, Executive, Committee, Sub-Committee, Members' Seminars, Steering Groups, Task Groups, Panels, Area Forum and other meetings can:

- Interfere with the Public Address [PA] and Induction Loop systems;
- Distract other people at the meeting;
- Interrupt presentations and debates;
- Mean that you miss a key part of a decision taken.

#### PLEASE:

Either switch off your mobile telephone, Blackberry, XDA etc. **OR** switch off its wireless/transmitter connection and sound for the duration of the meeting.

**THANK YOU FOR YOUR CO-OPERATION IN THIS MATTER.**

## **MINUTES OF THE STANDARDS COMMITTEE**

**22 SEPTEMBER 2009**

### **Present:**

#### **Councillors:**

T.W. Crabb  
C.A. Davis  
A.P. Hirst  
D.L. McShane  
G.F. Trussler

#### **Independent members:**

Mr M. Litvak (Chairman)  
Miss Sue Faulkner (Vice-Chairman)

**APOLOGIES:** Apologies received from Councillor E. O'Hara

### **301/09 MINUTES**

The minutes of the meeting held on 30 June 2009 were approved as a correct record.

### **302/09 DISCLOSURES OF INTERESTS**

No disclosures were made.

### **303/09 ICT SECURITY POLICY**

The Committee discussed with the ICT Manager the Council's ICT security policy and the action taken to ensure it continued to be robust. The Manager referred to the Government Code of Connection and the Corporate Information Policy.

Circulated at the meeting were a copy of the Personal Commitment Statement which all staff were required to sign up to together with information on how to protect your computer and the councils' network.

It was noted that nine security incidents had occurred over the last year. The committee discussed with the officers action that could be taken when such a breach occurred and what preventative measures were in place to prevent such breaches.

The Committee went on to discuss whether a similar commitment statement should be adopted for all Councillors and how best this could be achieved.

#### **RESOLVED that:**

1. The ICT Manager to adapt the staffs personal commitment statement for councillors and submit to the next meeting of the Committee for further consideration; and
2. The information circulated at the meeting on how to protect your computer and the councils' network be sent to all member of the Council.

**304/09 REVIEW OF THE PLANNING CODE**

The Monitoring Officer reported that the Councils' current Planning Code together with guidance from the Association of Councils' Secretaries and Solicitors had been attached to the agenda. He referred to a meeting arranged to review planning arrangements generally with the Leader of the Council and the review being undertaken by external consultants. He went onto apologise for the confusion the recent email sent to members on planning training had caused.

In considering the current Planning Code the committee particularly discussed how planning applications were called in; involvement of Ward Members; public speaking arrangements at committee meetings and pre application discussions.

The Committee identified that there was a possible need to introduce an interpretation clause at the beginning of the Planning Code. It was also felt that it may be helpful to look at how other council's conduct planning committee meetings.

The Committee indicated that to assist in the review of the Planning Code the views of the previous and current Chairman of the Planning Committee, members of the Planning Committee and the Head of Planning and Housing Strategy could be obtained.

**RESOLVED** that the review of the Planning Code be deferred until the next meeting of the committee to enable the current and previous Chairman of the Planning Committee and the Head of Planning and Housing Strategy to be invited to attend the meeting to give their views on the Planning Code

**305/09 NEW STANDARDS REGULATIONS 2009**

The Committee received the report of the Monitoring Officer on the recently made regulations to implement some of the outstanding provisions relating to Standards and introduced by the Local Government and Public Involvement in Health Act 2007. The main areas covered by the regulations that came into force on 15 June 2009 were:

- Allow the Standards Board to suspend arrangements for the local assessment of complaints
- Empower councils to establish joint standards committees
- Empower standards committees to grant dispensations to councillors to allow them to participate in meetings when they have a prejudicial interest.

**RESOLVED** that the report of the Monitoring Officer be noted.

**306/09 STANDARDS ASSESSMENT SUB COMMITTEE**

The committee noted that the Assessment Sub Committee meeting arranged to be held on 17 September 2009 had been cancelled due to the complainant receiving and accepting an apology from the member concerned.

**RESOLVED** to note the position.

## **POLITICAL RESTRICTIONS ON LOCAL GOVERNMENT EMPLOYEES**

### **Resolution Required**

### **Joint Report of the Monitoring Officer and Head of Human Resources**

### **REPORT SUMMARY**

#### **How does the content of this report improve the quality of life of Borough Residents**

Review of current arrangements will ensure Spelthorne has governance arrangements to meet legal requirements.

#### **Purpose of Report**

For Standards Committee to agree an appeal mechanism for members of staff who occupy or are appointed to politically restricted posts, to note changes to the criteria for political restriction and to note the current list of restricted posts.

#### **Key Issues**

- The responsibility for appeals against inclusion on the list of Politically Restricted Posts now rests with the local standards committee
- Recent change to remove posts solely on the basis of salary level
- Updated list of Politically Restricted posts

#### **Financial Implications**

There are none.

**Corporate Priority** 11. Effective Communications, and 12. Developing staff and councillors

#### **Recommendations**

**The Standards Committee is asked to adopt the arrangements for appeals set out in Appendix A, and to note the updated list of Politically Restricted Posts at Appendix B.**

**Contact: Jan Hunt, Head of Human Resources, telephone number 01784 444264  
Michael Graham, Monitoring Officer, telephone 01784 446227**

**Cabinet member: Councillor Mrs Leighton**

## **MAIN REPORT**

### **1. BACKGROUND**

- 1.1 Since 1989 Councils have had to identify and maintain a list of Politically Restricted Posts (PORPS) in order to ensure the political impartiality of those who serve in local government. Postholders are prevented from having any active political role either inside or outside the workplace and are disqualified from standing for or holding elected office, with those terms incorporated into the employee's contract of employment.
- 1.2 Posts have been designated as Politically Restricted on the basis of
- Certain specified senior posts, including statutory officers, chief officers and their deputies
  - Posts which exercise delegated authority
  - Posts which regularly give advice to councillors
  - Posts which have regular contact with the press
  - Posts remunerated at or above a level set by regulations.
- 1.3 All local authority employees were within the scope of PORPS and there are currently some 56 Politically Restricted Posts at Spelthorne, 25 of which were so designated on the basis of salary.
- 1.4 Postholders could seek exemption from political restriction by appealing to an Independent Adjudicator.

### **2. APPEALS TO THE LOCAL AUTHORITY STANDARDS COMMITTEE**

- 2.1 The responsibility for the granting of exemptions from political restriction transferred from the Independent Adjudicator to local authority standards committees with effect from 1 April 2008.
- 2.2 Employees included in the PORPS lists as 'sensitive posts' (see 3.4 below) can appeal against their inclusion if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria in their case.
- 2.3 Standards Committee would hear any appeals from individuals. Appeals require a letter from the applicant formally seeking exemption and enclosing a full job description of the post.
- 2.4 The ultimate test of whether an individual post is politically sensitive will depend on the nature of the duties the post regularly entails. In determining any application received, the Standards Committee will be deciding whether or not a post falls within the parameters set out in section 2.3 of the Local Government and Housing Act 1989. It is the post which is politically restricted, or exempted from political restriction, not the postholder and so the exemption is not transferable if the postholder changes role.
- 2.5 The Committee must also, on application from any person, review any post not included on the list of politically restricted posts. If the Committee considers that the duties of that post fall within the criteria and is not currently included it should issue a directive that it be included in the list of politically restricted posts.
- 2.6 The legislation requires that any applications for removal from the list of politically restricted posts from an employee who certifies that it is for the purpose of

enabling him/her to be a candidate in a forthcoming election should be given priority.

- 2.7 The secretary of state has not issued any detailed guidance on the procedures to be used in appeals, but guidance provided by the previous Independent Adjudicator is taken into account in the proposed arrangements for hearing appeals, set out in paragraph 5.1 to 5.3 and **Appendix A**.

### **3. CHANGES TO POSTS WHICH ARE POLITICALLY RESTRICTED**

- 3.1 The Local Democracy, Economic Development and Construction Act 2009 introduced changes to the approach to identifying posts which are politically restricted. From 12 January 2010 posts are no longer to be included as politically restricted on the basis of salary level alone.

- 3.2 Posts will now be politically restricted on the basis that they are a 'specified post' or a 'sensitive post'.

#### **3.3 Specified posts are**

- The Head of Paid Service
- The statutory chief officers (directors of children's services and director of adult social services)
- Non-statutory chief officers
- Deputy chief officers
- The Monitoring Officer
- The Chief Finance Officer
- Officers exercising delegated powers
- Assistants to political groups

All these post holders are politically restricted without rights of appeal for exemption to the local authority's standards committee.

- 3.4 **Sensitive posts** are those which meet one or both of the following duties-related criteria:

- Giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; to any committee of that executive; or to any member of that executive who is also a member of the authority
- Speaking on behalf of the authority on a regular basis to journalists or broadcasters.

These postholders can appeal to the local standards committee to be exempted from the list.

- 3.5 The revised list of politically restricted posts is attached in **Appendix B**.

### **4. OPTIONS ANALYSIS**

- 4.1 For Standards Committee to consider any future appeals from individuals against their inclusion in the list of politically restricted posts (legal requirement), and to note the current list of politically restricted posts. **Preferred option**.

## **5. PROPOSALS**

- 5.1 The proposed mechanism for Standards Committee to use when hearing appeals is included in **Appendix A (section 6)**.
- 5.2 Standards Committee would consider the job description, the submission from the postholder appealing against political restriction, and the Council's reasons for currently designating the post as politically restricted.
- 5.3 The decision of the Standards Committee would be binding, with no further right of appeal unless the role changed.
- 5.4 To note the list of Politically Restricted Posts with effect from April 2010 at **Appendix B**.

## **6. BENEFITS AND SUSTAINABILITY**

- 6.1 The proposals will ensure that Spelthorne complies with legal requirements.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 There are none.

## **8. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS**

- 8.1 The requirements for political restriction of certain posts is set out in the Local Government and Housing Act 1989 (the LGHA) as amended by the Local Democracy, Economic Development and Construction Act 2009. Under section 3 of the LGHA the responsibility for granting exemptions from political restriction passed to local authority standards committees.
- 8.2 The compatibility of political restrictions with an individual's rights under the European Convention of Human Rights was tested in the case of Ahmed and others v UK (1999). The European Court of Human Rights held that the political restrictions did not breach Article 10 (the right to freedom of expression) or Article 11 (the right to freedom of association) as the public has the right to expect that those holding higher level local government office are politically impartial.

## **9. RISKS AND HOW THEY WILL BE MITIGATED**

- 9.1 The risk is that the interpretation of which posts are included in the list of politically restricted posts will be too wide leading to a significant number of appeals. Careful consideration of the duties of posts in relation to the criteria set in the LGHA will mitigate the risk.

## **10. TIMETABLE FOR IMPLEMENTATION**

- 10.1 Updated information on the political restriction of posts and the appeal process to the Standards committee will be published on Spelnet following approval by Standards Committee.
- 10.2 The Head of Corporate Governance will include information on appeal arrangements in the next revision of the Constitution and terms of reference for Standards Committee.

**Report Author: Jan Hunt, Head of Human Resources, 01784 444264**

**Background Papers: There are none**



## Politically Restricted Posts and Exemptions from Political Restriction

This document explains how the rules restricting the political activities of certain local government employees apply in the Spelthorne Borough Council context and sets out procedures for applying to the Council's Standards Committee for a post to be exempt from or included in the list of politically restricted posts

### 1 The Effect of Political Restriction

The main provisions regarding politically restricted posts are set out in the Local Government and Housing Act 1989, as amended by the Local Democracy, Economic Development and Construction Act 2009. The law aims to ensure the political impartiality of local government staff who hold posts involving duties of a politically sensitive nature.

The effect of including a post on the list of politically restricted posts is to prevent the post holder from having any active political role either in or outside the workplace, in particular:

- Standing as a candidate for publicly elected office, unless the employee resigns prior to announcing his or her candidature.
- Acting as an election agent or sub agent for any candidate for election.
- Holding office in a political party.
- Canvassing at any elections.
- Speaking or writing publicly (other than in an official capacity) with the intention of affecting public support for a political party

Employees within politically restricted posts are permitted to join political parties but must have no active participation within the party.

### 2 Categories of Politically Restricted Posts and Politically Restricted Posts at Spelthorne

Politically restricted posts fall into categories of local government officer as follows:

- 1 Posts individually identified in the legislation, either by name or by their relationship to other senior officers (except that secretarial or support staff would not be included even if they report direct to the Chief Executive).
- 2 Posts to which duties have been delegated under the Scheme of Delegation to Officers.
- 3 Posts where the duties of the post include giving advice on a regular basis to the authority themselves, to the Executive, to any committee or sub-committee of the Council or any joint committee on which the Council is representative or to a member of the Executive and/or speaking on behalf of the Council on a regular basis to journalists or broadcasters.
- 4 Political Assistants.

#### Politically Restricted Posts at Spelthorne Borough Council

Posts set out in the following table are subject to section 2(1) of the Local Government and Housing Act 1989. These posts are politically restricted without rights of exemption.

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Spelthorne designated 'specified' posts</b>
The Head of the Authority's Paid Service	Chief Executive
Statutory Chief Officers	Chief Finance Officer, currently Assistant Chief Executive (TC)
Non Statutory Chief Officers	Deputy Chief Executive Assistant Chief Executives
Deputy Chief Officers	Heads of Service Any other employee who reports directly to or is directly accountable to any of the posts listed in the above three categories
The Monitoring Officer	Head of Corporate Governance
Political Assistants	None
Posts with functions delegated to them under the Scheme of Delegation to Officers	Posts with functions delegated to them under the Scheme of Delegation to Officers set out in the Council's Constitution

Posts in the following table are subject to Section 2 (3) of the Local Government and Housing Act 1989 and may apply for exemption from political restriction.

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Spelthorne designated 'sensitive' posts</b>
Giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority, to any joint committee on which the authority are represented, to the executive of the authority or to a committee or member of the executive	An updated list of posts will be maintained by Human Resources
Speaking on behalf of the authority on a regular basis to journalists and broadcasters	An updated list of posts will be maintained by Human Resources

### **3 The Role of Spelthorne's Standards Committee**

The Standards Committee has statutory responsibility for the grant and supervision of exemptions from political restriction and will consider applications from members of staff for exemption from political restriction in respect of a post he or she holds with the Council, or has been offered, and consider applications for a direction that the Council include any post in the list of politically restricted posts maintained by it.

### **4 Guidance for Human Resources**

The Council is required to maintain a list of politically restricted posts.

Where the Standards Committee issue a direction regarding a post the Head of Human Resources will amend the list accordingly

Where new appointments are made to posts included in any of the categories of posts referred to above, the Council's letter of appointment must refer to the fact that the post is politically restricted. Postholders included on the basis of section 2(3) of the Local Government and Housing Act will be advised of their right of appeal [i.e. those in 'sensitive' posts].

### **5 Guidance for Employees on Exemptions (appeals against inclusion in the list of politically restricted posts)**

#### **What is Political restriction?**

The appointment and conditions of employment of every person holding a politically restricted post under a local authority are deemed to incorporate requirements to restrict his or her political activities. These restrictions are set out in the Local Government Officers (political restrictions) Regulations 1990/51 and are described briefly in paragraph 1 of this guidance.

Any holder of a politically restricted post must, by notice in writing, addressed to his/her manager and the Chief Executive, resign with immediate effect prior to announcing their candidature for election as a Member of the House of Commons, the European Parliament, the Scottish Parliament, Welsh Assembly or any local authority (excluding parish/town councils). It is left to the discretion of the Chief Executive whether or not to reinstate an employee who resigns his/her post and consequently loses an election

#### **Who can apply for an exemption from political restriction?**

Any Council employee and successful candidate for a post at Spelthorne Borough Council whose post falls within the 'sensitive' category set out above may be eligible to apply to the Standards Committee for their post to be removed from the list of politically restricted posts, unless their post is also included as a 'specified' post.

#### **Applying for an exemption**

Post holders applying for an exemption in relation to their post may apply on the grounds that one or more of the tests referred to in Section 2(3) Local Government and Housing Act 1989 do not apply to their post.

If you want to apply for a political exemption you should write to the Head of Human Resources stating the title of your post, the basis upon which the post is currently deemed to be politically restricted and the reason why you consider that political

restriction is no longer appropriate. You must include the current job description for the post approved by your line manager.

The Head of Human Resources will issue a Certificate of Opinion as to whether or not the duties of the post are considered to fall within Section 2(3) of the 1989 Act, and may also state the Council's view of the merits of the application.

Your application will be presented to the Standards Committee for a decision on whether the post should be exempted from political restriction.

If the Committee determines that the duties of the post do not fall within the remit of Section 2(3) of the Local Government and Housing Act 1989, the Committee will direct that for a specified period, the post will not be regarded as politically restricted and should be removed from the list of politically restricted posts maintained by the Council. The Head of Human Resources will remove the post from the relevant politically restricted list and keep the post under review.

## **6 Consideration of Applications by the Standards Committee**

### **Procedure to be followed by the Standards Committee**

The Standards Committee will hear any applications for exemption from or inclusion of posts on the list of politically restricted posts maintained by the Council. All decisions will be based on whether the duties of the post in question render it politically sensitive within the definition set out in section 2(3) of the Local Government and Housing Act 1989. The Committee will be advised by the Monitoring Officer or his nominated representative.

The access to information rules applies to the Committee considering such an application.

In addition to the application from the post holder, the Committee will require a copy of the post holder's job description, approved by their line manager (or in the case of a future joiner a copy of the job description provided by the recruitment team) and a Certificate of Opinion from the Head of Paid Service (Chief Executive) or nominee in the form set out in the appendix to this guidance.

The applicant may attend and will be invited to make representations in support of his or her application and may be accompanied by an accredited trade union representative or work colleague. The post holder's representations will be heard first.

The Head of Human Resources or her nominee may attend to represent the case on behalf of the Council.

The Committee will retire to consider its decision. The Committee Manager will retire with the Committee for the purpose of note taking only.

The Committee manager will notify the Chief Executive, the Head of Human Resources and the post holder of its decision within five days of the meeting.

The Head of Human Resources will implement any direction for inclusion of a post in or exclusion of a post from the list of politically restricted posts.

The decision of the Committee is final; there is no further right of appeal.

### **Granting of Exemptions**

Any employee or future employee whose post is included in the list of politically restricted posts may make an application to the Standards Committee for a direction that his or her post should be removed from the list of politically restricted posts and will

be entitled to exemption from political exemption if the nature of the duties of that post do not require the post holder to be politically neutral.

The Standards Committee will however only consider applications for exemption from future joiners if they have received formal job offers from the Council. The Committee will not consider applications from people who are only considering applying for a Council post but have not received a job offer.

### **Criteria for determining applications**

The test for those posts that require political neutrality is set out in Subsection 2 (3) of the Local Government and Housing Act 1989 as follows:

*“The duties of a post under a local authority fall within this subsection if they consist in or involve one or both of the following, that is to say –*

- a. Giving advice on a regular basis to the authority themselves, to any committee or sub committee of the authority or to any joint committee on which the authority are represented, or where the authority are operating executive arrangements to the executive of the authority, to any committee of that executive, or to any member of that executive who is also a member of the authority;*
- b. Speaking on behalf of the authority on a regular basis to journalists or broadcasters.”*

Adjudication of matters arising as a result of differing interpretations of Section 2 (3) of the 1989 Act are the prerogative of the Committee, and the ultimate test of whether an individual post is in fact politically sensitive is likely to depend on the nature of the duties of the post. The Committee may wish to seek evidence on the following points:

- *Giving advice to any committee or sub committee of the authority or to any joint committee on which the authority are represented, or where the authority are operating executive arrangements to the Executive of the authority, to any committee of that executive, or to any member of that executive who is also a member of the authority:* Guidance from the former Independent Adjudicator has established that advice to individual back bench members does not fall within this definition
- *“On a regular basis”* – Something more than an occasional attendance to present a formal report to a committee is needed to establish that advice is needed on a regular basis. Guidance from the former Independent Adjudicator suggests it is useful to consider the number of times over, say, the previous twelve months, that the post-holder has provided a report to an individual member of the executive or either attended, or provided a report for those groups of individuals listed; and to consider a description of the contents of such a report including whether the report embodied advice or recommendations and whether the post holder was required to speak at the meeting.
- Overview and scrutiny committees are *committees of the authority* and therefore giving advice on a regular basis to overview and scrutiny committees and sub committees comes within the scope of Section 2(3)(a) of the 1989 Act.

Politically Restricted Posts - Local Government and Housing Act 1989

**Certificate of Opinion – Spelthorne Borough Council**

Section 2(3) of the Local Government and Housing Act 1989 states that political restriction applies where the post holder:

- a. Gives advice on a regular basis to the authority themselves, to any authority or sub committee of the authority or to any joint committee to which the authority are representatives or, where the authority are operating executive arrangements, to the executive of the authority, to any committee of that executive or any member of that executive who is also a member of the authority;
- b. Speaks on behalf of the authority on a regular basis to journalists or broadcasters

**Head of Paid Service’s Statement**

Post Title:.....

This is to certify that it is Spelthorne Borough Council’s opinion that the duties of the above mentioned post fall within Section 2(3) of the Local Government and Housing Act 1989 \*

or do not fall within Section 2(3) of the Local Government and Housing Act 1989.\*

Full name of current post holder:.....

Job description : (to be attached) A copy of the job description for this post is attached.

**Supporting Statement** – Please provide information showing to what extent over the past twelve months the post holder has advised the Council, the Cabinet, executive members, Council committees or sub committees or joint committees or has spoken regularly for Spelthorne Borough Council to journalists or broadcasters. For new posts, please outline the degree it is anticipated the post holder will be carrying out the duties described above.

Head of Paid Service or nominee – Name:.....

Signature:.....

Date:.....

### Politically Restricted Posts at Spelthorne Borough Council

Posts set out in the following table are subject to section 2(1) of the Local Government and Housing Act 1989. These posts are politically restricted without rights of exemption.

Description of post in the Local Government and Housing Act 1989	Spelthorne designated 'specified' posts
The Head of the Authority's Paid Service	1001 Chief Executive
Statutory Chief Officers	4530 Assistant Chief Executive (TC) - Chief Finance Officer
Non-Statutory Chief Officers	2000 Deputy Chief Executive 1022 Assistant Chief Executive (BH) 2500 Assistant Chief Executive (LB)
Deputy Chief Officers i.e. any other employee who reports directly to or is directly accountable to any of the posts listed in the above three categories	6001 Head of Streetscene 2200 Head of Planning and Housing Strategy 1030 Head of Community Safety and Corporate Services 4400 Head of Human Resources 2300 Head of Sustainability and Leisure Services 4300 Head of Customer and Office Services 4800 Head of Audit 4150 Head of Asset Management 2100 Head of Environmental Health and Building Control 2705 Head of Housing Benefits and Housing Options 4560 Chief Accountant 4575 Financial Support Services Manager 4201 ICT Manager 4760 Revenues Manager 1071 Business Improvement Manager 1052 Communications Manager
The Monitoring Officer	1021 Head of Corporate Governance
Political Assistants	None
Posts with functions delegated to them under the Scheme of Delegation to Officers set out in the Council's Constitution	4764 Principal Revenues Officer 4776 Senior Recovery Officer 4761 Recovery Officer 4772 Property Inspector 4730 Principal Housing Benefits Officer 4103 Principal Solicitor and Deputy Monitoring Officer 4112 Assistant Solicitor 4116 Lawyer – Planning and Litigation 4113 Principal Lawyer 6203 Neighbourhoods Manager 6204 Neighbourhood Supervisors (x 3) 6208 Community Warden (Stanwell) 2451 Parking Services Manager 2461 Senior Car Parks Administrator 2140 Environmental Health Manager 2133 } 2142 }Environmental Health Officer / Senior 2143 }Environmental Health Officer 2144 }

## APPENDIX B

Posts in the following table are subject to Section 2 (3) of the Local Government and Housing Act 1989 and may apply for exemption from political restriction.

<b>Description of post in the Local Government and Housing Act 1989</b>	<b>Spelthorne posts considered 'sensitive' (and not already included in the list of 'specified' posts)</b>
Giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority, to any joint committee on which the authority are represented, to the executive of the authority or to a committee or member of the executive	2240 Deputy Head of Planning & Housing Strategy 2220 Assistant Head of Planning (Development Control) 2219} Principal Planning Officers 2221} 2241}  2225} Senior Planning Officers 2228}  4806 Senior Auditor 4805 Auditor 2120 Environmental Health Manager 2124 Principal Pollution Control Officer 2152 Licensing Manager 2432 Licensing Enforcement Officer 2262 Senior Building Control Surveyor
Speaking on behalf of the authority on a regular basis to journalists and broadcasters	1024 PR and Communications Officer

List with effect from April 2010



## **Outstanding report for the Standards Committee Meeting 30 March 2010**

### **REVIEW OF THE PLANNING CODE**

#### **For Resolution**

#### **Report of the Monitoring Officer**

#### **EXECUTIVE SUMMARY**

#### **How does the content of this report improve the quality of life of Borough Residents**

Not applicable – though the benefit of the report is that it will improve the transparency of processes and decision making at Planning Committee.

#### **Purpose of Report**

To consider changes to the Planning Code in light of recent discussions.

#### **Key Issues**

- ⇒ Planning Committee
- ⇒ Council Constitution
- ⇒ “Member over-turns”
- ⇒ Planning Committee Members discussions with residents
- ⇒ Pre-application discussions
- ⇒ Role of councillors in appeals

#### **Financial Implications**

There are no direct financial implications arising from this report.

#### **Corporate Priority**

Not appropriate.

#### **Officer Recommendations**

**To consider the issues in this report and await the Council’s consideration of the Trevor Roberts Associates Report before finalising any changes to the Planning Code.**

**Contact: Michael Graham, Head of Corporate Governance, 01784 446227**

## MAIN REPORT

### 1. BACKGROUND

- 1.1 The Standards Committee discussed this matter informally on 3 December 2009. It was noted at that time that Trevor Roberts Associates was undertaking a review of the planning function at Spelthorne Borough Council and that final changes to the Planning Code would be dependent on the advice which the Council received in that report.
- 1.2 The final report has recently been received from Trevor Roberts Associates and it includes recommendations which span the administration of the planning department and the constitutional arrangements for planning. With a long and detailed report and a large number of recommendations, Members will want to reflect on the implications for the Council. No formal response has yet been given by the Council and the implications for implementation of the recommendations have not been fully considered. Given the wide range of recommendations it is not prudent to complete this review of the Planning Code at Standards Committee at this meeting because other matters arising from the report will have to be considered in due course.
- 1.3 However, given the discussions so far, it is necessary to document the suggested changes to the Code in order that the Committee can communicate to other interested stakeholders the areas which it has discussed so far and the emergent thinking.

### 2. KEY ISSUES

- 2.1 The matters which have been raised so far are as follows:
- 2.2 **Pre-disposition of councillors to overturn an officer recommendation and the actions which should be taken when this occurs.** Often when a councillor has been considering a planning application a view will start to form of the issues and the councillor may well take a view on the way that he or she is likely to vote at a subsequent meeting. This is called “pre-disposition”. Such a view arises when councillors make themselves familiar with the application, talk to local residents, visit the application site and review the planning policies of the Council. A view may form at an early stage, when the report is not yet received for the Committee or at a later stage when the advice of the officers is known. Provided the councillor keeps an open mind about the application until the Committee, this sequence of events is to be expected and is common place. Often councillors will develop matters to be raised at Committee from these early considerations. Provided that the councillor does not close his or her mind to the possibility of taking a different view then generally speaking they will not have “pre-determined” the matter.
- 2.3 An issue occurs when a councillor takes a view that they may be minded **not** to support an officer recommendation. If that councillor waits until the Committee to make that known then he or she may miss an opportunity to take advice from the Head of Planning and Housing Strategy. If matters progress such that the councillor wishes to formulate an alternative proposal for the Committee to decide the matter then it is advisable if advice is taken at an early stage so that all possible implications of planning policy can be considered. It is difficult proposition for the Head of Planning to effectively tackle two roles in the Planning

Committee without advance warning from councillors. Her first role is to give her unbiased professional advice about the correct course of action. The second role as a senior advisor for councillors is to help them achieve what they want to achieve as elected representatives. It is therefore considered appropriate to offer advice to councillors about situations where they feel minded to recommend an overturn. Simply, this is to seek advice from the Head of Planning and Housing Strategy in advance. The Council's constitution stipulates that alternative motions or amendments have to be made clear and therefore there ought to be a stipulation in the Planning Code that gives the same expectation for Planning Committee. Any proposal for the determination of an application which is not in accordance with the officer recommendation ought normally to be discussed in advance with the Head of Planning and Housing Strategy and made in writing with proper consideration for the reasons of the proposal in accordance with the Council's procedures.

- 2.4 **Communication between residents and councillors and the ability of councillors to take a leadership role in the community when on the Planning Committee.** Concern was raised that councillors on the planning committee often find themselves in a difficult position when dealing with approaches from concerned residents about applications in the neighbourhood. Often the automatic response is given that, because the councillor is not able to give a view, the resident should contact another ward member. Such a response is borne of the necessity to keep an open mind about planning application, and also, to be seen to do so. In some respects, that we have this problem is perhaps symptomatic of councillors trying to do the right thing. The advice to councillors has always been, and always will be, to keep an open mind about planning applications and to come to a decision once all the information has been provided, and debated, in planning committee.
- 2.5 Sometimes however it is difficult to square this “quasi-judicial” role of a councillor with the other roles as an advocate for the local residents, and perhaps as well on some occasions as a campaigner or community leader.
- 2.6 The dilemma was recognised in “Positive Engagement” – a guide for planning councillors. (Copies of this were distributed to members at the informal meeting on 3 December 2009). The advice recognised that councillors can involve themselves in discussions with developers, residents and others about planning matters provided that they heeded the advice in the note. Much of this is sensible advice which is already repeated in the Planning Code. Essentially, the issue of engagement might well be one for future training to allow councillors to be able to steer their way through the issues and advice offered. However it is possible to suggest some changes to the wording of the present Code and these are set out at paragraph 7 of Appendix 1 attached.
- 2.7 **Issues associated with multi-member wards.** The issues raised in paragraph 2.5 above are brought into sharper focus on the rare occasions when a resident cannot turn to a ward councillor for support. One example might be if two members of the ward are members of the planning committee and the third member happens to be the Mayor. Although this is not an everyday scenario it does serve to demonstrate that the Council must achieve a situation whereby Members of the Planning Committee have the confidence to engage in discussions with residents without feeling that they are thereby compromising the impartiality of themselves, the Committee or the decision making process.

Training is an important need here but any clarifications or rectifications of the current code can be considered.

2.8 **The nature of pre-application discussions and the ability of councillors to engage with these discussions.** The current system of pre-application advice allows developers to seek professional advice from planning officers about proposed developments and the applicable planning policies. It is highly desirable that developers come forward to seek such advice because:

- (a) it allows planning officers to spot inadvisable applications and give feedback to developers about the chances of seeking permission for schemes which will raise concerns in the community but which have little chance of success;
- (b) it allows planning officers to open a dialogue with developers on schemes which may be acceptable but which need to be amended to take into account particular policy issues before they are submitted;
- (c) it enables an free flow of discussion between planning officers and developers on any potential planning obligations that may need to be included in any subsequent section 106 agreement.

2.9 It will be noted however that within the process, the planning officers will be aware of issues at a much earlier stage than councillors. This gives rise to a concern about how councillors can feed in the views of the community. This is a difficult area since the Council needs to balance the needs of different stakeholders who may have differing expectations of the planning process. For instance, a developer may be interested in sounding out chances of a planning application but might not wish to do so if it was going to be public knowledge. Councillors will wish to raise concerns of the community but at the same time there will be a wish on the part of the Council not to alarm residents unnecessarily if applications are clearly inadvisable or speculative with little chance of success. Given the considerable changes in process which such a scheme would involve the Standards Committee should consider if it wishes to make changes to the Planning Code or whether it wishes to introduce a separate protocol.

2.10 The issue of pre-application advice has been considered in a Practice Note of the Planning Officers Society – Councillor Involvement in pre-application discussions. This was circulated at the previous informal discussion of the Standards Committee in December 2009. The paper arises from the issues raised above but asks how councillors can act as community champions if they are not engaged in pre-application discussions for major proposals affecting their communities. It is noted that the Planning Advisory Service also encourages member involvement in pre-application discussions on major applications, provided members' roles at this stage are clearly understood. It is noted that in order to avoid any appearance of pre-determination councils should ensure pre-application discussion is conducted in the most transparent way possible. Various methods are outlined in the paper including:

- (a) Informal private briefings – with notes available for public viewing
- (b) Interim committee reports
- (c) Developer presentations to a Committee – Members will be aware that this is already a feature of the present Planning Code

(d) Developer forums – developers organise such consultation in accordance with Statement of Community Involvement requirements

(e) Development Control Forums

2.11 Paragraphs 8-11 of the Planning Code should be considered in more detail to decide what, if any, amendments should be made to the advice offered.

2.12 **Role of ward councillors in appeals.** Occasionally ward councillors and planning committee members become involved in appeals. Advice is already given in the code that where a councillor thinks it desirable to take part in any appeal they should first seek the advice of the Head of Planning and Housing Strategy. This is not to preclude the involvement of the councillor but it is a courtesy and a safeguard to ensure that all those with an interest in the outcome of an appeal are appraised of what is happening so that there is less potential for conflicts of interest or embarrassing situations to arise. In order to ensure that ward councillors are informed about matters which arise in their area, it is proposed that the obligation is extended so that councillors wishing to take part in planning appeals outside their own ward, extend the courtesy of informing all ward councillors of their intention to do so. A suggested amendment is shown at paragraph 22 of Appendix 1.

### **3. OPTIONS ANALYSIS**

3.1 This report is for consideration of the Standards Committee for further debate before a further stage of discussions on the implications of the recent Trevor Roberts Associates Report.

### **4. PROPOSALS**

4.1 To note the report.

### **5. BENEFITS AND SUSTAINABILITY**

5.1 Not applicable.

### **6. FINANCIAL IMPLICATIONS**

6.1 Not applicable.

### **7. LEGAL IMPLICATIONS / OTHER CONSIDERATIONS**

7.1 Identified in the report.

### **8. RISKS AND HOW THEY WILL BE MITIGATED**

8.1 None apparent.

### **9. TIMETABLE FOR IMPLEMENTATION**

9.1 Discussed in the report.

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#### **Background Papers:**

There are none

# SPELTHORNE BOROUGH COUNCIL

## [Suggested changes to the ] PLANNING CODE

### Introduction

1. The purpose of this Code is to give clear guidance to Members about how they should carry out their duties in relation to planning and development proposals so as to ensure openness, transparency and consistency in planning decisions.

### General Role of Members

2. Members have a special duty to their ward constituents, including those who did not vote for them, but their overriding duty is to the whole community. Whilst representing their constituents on planning issues and taking account of their views, Members must base their decisions on material planning considerations and what they believe is best for the Borough as a whole. A Member is not under any obligation to represent a resident on a specific planning application if, in the opinion of the Member, there are no issues which have wider significance for the neighbourhood, ward or Borough as a whole.

### General Role of Officers

3. Officers are responsible to the Council as a whole. They must always act openly and impartially and provide consistent professional advice based on planning policies and procedures, ensuring Members are aware of all relevant material planning considerations before decisions are made.

### Codes of Conduct

4. Both Members and Officers are required to observe codes of conduct and statutory provisions including the local code of conduct for members the aim of which is to ensure the integrity of the Council and individual Members. These require the open disclosure of any prejudicial or personal interests in issues being considered by the Council or its committees. Members and Officers are also advised not to accept any gifts or hospitality, which might reasonably be considered to influence their judgement and to record any they do accept in the registers maintained for the purpose. Planning decisions in particular can affect the daily lives of everyone and it is important to ensure there can be no justifiable grounds for suggesting a decision has been biased or influenced in any way.
5. Training and guidance on the code, and in particular the local code of conduct for members on the declaration of interests, has been provided to all Members by the Council's Monitoring Officer and will be regularly updated. Members of the Planning Committee must be particularly careful to ensure that they are familiar with this. It is the personal responsibility of individual Members to ensure they comply with the code and make all appropriate declarations at Planning Committee. If in any doubt they should seek advice from the Monitoring Officer or the solicitor to the Planning Committee. Officers with an interest in property in the vicinity of an application or any relationship to an

applicant, should disclose this to the Head of Planning and Housing Strategy, who will record the interest and make appropriate arrangements for the handling and supervision of the application to avoid any perception of a conflict of interest.

### **Lobbying of and by Members**

6. Lobbying of Members for or against proposals is a normal part of the planning process. The rules of natural justice mean that planning applications should be determined in an open and fair manner and taking account of relevant information and arguments. It is only at Planning Committee meetings that Members will have, and be able to consider, all the relevant information and arguments about an application before making a decision.
7. It is important in maintaining the integrity of individual Members and the Council as a whole that Members of the Planning Committee should:-
  - ❖ if lobbied, explain that, whilst they can listen to what is said, they cannot indicate before the relevant Committee meeting which way they intend to vote as it would prejudice their impartiality;
  - ❖ preface any discussion on a planning application to make it clear from the outset that discussions are not binding and they will only be able to make a final decision at the Committee after hearing all relevant information and arguments;
  - ❖ declare at the Committee meeting, any meetings they have had with applicants or objectors;
  - ❖ advise Planning Officers of letters/personal lobbying in relation to applications so the issues raised can be taken into account in the professional advice given to the Planning Committee. (A draft letter which Members can use to acknowledge representations and explain their position is available from officers);
  - ❖ See Paragraph 12 below for commentary in relation to site visits;
  - ❖ not organise support or opposition to any planning application, lobby other Members or put pressure on Officers for a particular recommendation because this might remove them from the decision making process.

If a Member has received legal advice with regard to a declaration, a personal or prejudicial interest, then he / she may disclose the fact that legal advice has been given at the time when the declaration or interest is disclosed.

### **Meetings**

8. Officers frequently hold meetings with applicants and objectors to discuss applications. These are part of the normal planning process but are, and must be clearly stated to be, without prejudice to the professional recommendation they may make to the Committee and the decision of the Committee when all information is before it. Members will not normally attend such meetings.

9. If a Member wishes to arrange a meeting with planning officers for themselves and a small number of constituents about a planning application this will be arranged at the Council Offices. If requested to do so officers will try to attend meetings arranged by Members with their constituents away from Knowle Green provided all ward Councillors are invited to attend.
10. If attending public meetings, Members of the Planning Committee should try to maintain an impartial role, listening to what is said but not expressing an opinion. Officers will not normally attend public meetings unless their attendance has been agreed by the Head of Planning and Housing Strategy and representatives of both the applicant and objector are given the opportunity to be present. Ward Members and the Chairman of the Planning Committee will be advised of any public meeting in relation to a planning issue either organised by Officers or which Officers have agreed to attend.

### **Presentation on Likely Major Development Proposals**

11. The Planning Committee does not allow presentation of development proposals to be made by applicants. The Council itself organises presentations to keep Members informed generally on matters which appear to have or are likely to have strategic importance for the Borough but will not usually do so in relation to any matter which is the subject of a current planning application to the Council. In exceptional cases the Head of Planning and Housing Strategy may organise a technical briefing on major developments at which developers may be present. At any such presentations Members should try to maintain an impartial role, listening to what is said and asking questions but not expressing an opinion.

### **Site Visits**

12. Formal site visits by the Planning Committee will only be undertaken in exceptional circumstances and in accordance with the guidelines attached at [Appendix 'A'](#). The necessity for such a visit will be agreed between the Chairman of the Committee and the Head of Planning and Housing Strategy. Ward Councillors who are not on the Committee will be advised of any site visit and invited to attend. Members of the Planning Committee will often wish to make informal visits to an application site prior to Planning Committee to familiarise themselves with the layout of the neighbourhood. Provided that no other persons are present then Members do not need to declare such a visit at Planning Committee. If other people are present at the site visit (e.g. applicant or objector) then Members should have regard to the advice in paragraph 7 (lobbying) and are advised to declare such a visit at Committee before consideration of the item.

### **Officer Reports to Committee**

13. All matters requiring a decision by the Planning Committee should be the subject of a written report from Officers which should be accurate and cover all relevant planning issues. In particular it should include a clear outline of the site history, the relevant development plan policies, the response of consultees and the substance of objections. The report should include a clear recommendation



with a technical appraisal justifying it. Any objections or other relevant issues arising after the report is printed should be reported verbally to the Committee at its meeting.

### **Procedure at Committee Meetings**

14. Applicants and objectors will be able to address the Planning Committee in accordance with the procedure agreed from time to time by the Council, the current version of which is attached at [Appendix 'B'](#). This outlines the issues which the Committee can and cannot normally take into account.
15. Where Members who are not members of the Planning Committee have indicated to the Chairman, prior to a Committee meeting, their wish to speak on a matter in their ward being considered at the Committee, they will be entitled to speak immediately after representatives of the applicant and/or objectors have addressed the Committee. Non members of the Committee should comply with the procedure for declaration of interests and contact with the applicant or objectors if they attend and speak at a Committee meeting in the same way as members of the Committee.

Ward Councillors may wish to address Planning Committee on:

- Applications which have caused interest amongst large numbers of residents of the Ward
- Applications which have significance for the character, facilities or environment of the Ward.

Ward Councillors should not usually seek to address Planning Committee on:

- Matters which are the subject of a dispute between two residents of the Ward
- Matter which reflect the concerns of one resident only, unless there is some reason why the resident is not able to speak for himself at the Planning Committee.

### **Decision Making**

16. A decision on a planning application cannot occur before the Committee meeting when all available information is to hand. Any political group meetings prior to a Committee meeting should not be used to discuss the details of applications or to reach conclusions. Group meetings should confine themselves to the following procedural matters:

Public Speakers  
Declarations of Interests  
Late Information  
Withdrawals  
Changes of condition; or  
any other procedural issues.

17. The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise. If the officer's report recommends a departure from the development plan the justification for this must be included in the report.
18. Decisions must be made on planning merits and the reasons for making a decision should be clear and supported by material planning considerations. The reasons for refusing an application should always be minuted as should any conditions attached to an approval.
19. If the Committee wishes to make a decision contrary to the officers' advice, an officer present at the meeting should be given the opportunity to explain the implications of such a decision. If the Committee wish to refuse an application or impose additional conditions the reasons for doing either must be clearly stated when this is proposed. The decision and reasons for it as agreed by the Committee must be minuted.
20. Members who are pre-disposed to propose an outcome against officer advice should first seek advice from the Head of Planning and Housing Strategy. Any motion contrary to officer advice should be formulated in writing with reasons which can be handed up to the Chairman if requested.

#### **Applications Involving Members, Officers or the Council**

21. Any planning application made by a Member or officer or the Council itself should be determined by the Planning Committee and not by the Deputy Chief Executive under his delegated powers. Members of the Planning Committee and Officers should not normally act as agents for another person or body pursuing a planning matter with the Council and if they do any planning decision must be made by the Planning Committee and not under delegated powers.
22. Whenever possible a Member making a planning application should appoint an agent to act on their behalf. The Member must take no part in making a decision on the application.

#### **Involvement of Members in Appeals**

23. Where a Member wishes to play a part in any appeal, he/she should seek first the advice of the Head of Planning and Housing Strategy and as a courtesy inform relevant Ward Councillors.

#### **Training of Members in Planning Issues and Procedures**

24. No Member should be appointed to the Planning Committee without having agreed to undertake training in planning procedures and the Code of Conduct. The Head of Planning and Housing Strategy with the support of the Monitoring Officer and after consultation with the Chairman of the Planning Committee will arrange suitable training opportunities at regular intervals and will supplement this with written guidance.

#### **Review of Decisions**

25. Arrangements will normally be made annually for Members to visit a sample of sites where planning permissions have been implemented to assess the quality of the built development/respective schemes.