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Our ref:  
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Date: 9 March 2011

**NOTICE OF MEETING:**

**STANDARDS COMMITTEE**

**DATE: THURSDAY 17 MARCH 2011**

**TIME: 7.30PM**

**PLACE: GODDARD ROOM, COUNCIL OFFICES, KNOWLE GREEN, STAINES**

TO: ALL MEMBERS OF THE STANDARDS COMMITTEE

***Councillors:***

T.W. Crabb  
C.A. Davis  
K.E. Flurry  
A.P. Hirst  
Mrs C. Spencer  
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 30 September 2010 **(Copy attached)**

### **3. DISCLOSURE OF INTERESTS**

To receive any disclosure of interests from members.

### **4. PLANNING – AMENDMENTS TO THE SCHEME OF DELEGATIONS**

To consider the **attached** report of the Deputy Chief Executive on proposed changes to the scheme of delegation regarding planning applications and the impact these changes will have.

To assist in the debate the Chairman of the Planning Committee, Councillor H.A. Thomson and the Cabinet member responsible for Planning and Housing, Councillor R.A. Smith-Ainsley have been invited to attend the meeting and participate in the debate.

### **5. LOCALISM BILL**

To consider the **attached** briefing paper from the Assistant Chief Executive providing a summary of the changes in the localism Bill.

### **6. FUTURE OF THE STANDARDS REGIME**

The Monitoring Officer will provide an update at the meeting on the latest position concerning the abolition of the national Standards regime by the Coalition Government. A copy of a statement from the Department of Communities and Local Government is **attached**

### **7. OUTCOME OF COMPLAINTS TO THE ASSESSMENT/REVIEW SUB COMMITTEES**

The Committee is asked to note the following information:

During 2009/2010 the Assessment Sub Committee met on two occasions to consider allegations of a potential breach of the code of conduct against three borough councillors. The Sub Committee in each case determined that a potential breach of the Code of Conduct had not been identified and there was no justification to warrant an investigation. However in coming to the decision on one of the allegations it was also recommended that a written apology from the councillor concerned be sent to the complainant for any inadvertent offence that may have been caused.

Only one of the allegations progressed to the Review Sub Committee and having noted the decision of the Assessment Sub Committee it resolved to reject the complaint without investigation as it did not disclose a breach of the Member Code of Conduct.

## MINUTES OF THE STANDARDS COMMITTEE

30 SEPTEMBER 2010

### Present:

#### Councillors:

T.W. Crabb

C.A. Davis

K.E. Flurry

A.P. Hirst

G.F. Trussler

#### Independent members:

Mr M. Litvak (Chairman)

**APOLOGIES:** Apologies received from the Vice Chairman, Miss Sue Faulkner and Councillor Mrs C.L. Spencer.

The Chairman of the Planning Committee, Councillor H.A. Thomson and Councillor Mrs M. Rough were in attendance

#### 293/10 MINUTES

The minutes of the meeting held on 30 March 2010 were approved as a correct record.

#### 294/10 DISCLOSURES OF INTERESTS

No disclosures were made.

#### 295/10 REVIEW OF THE PLANNING CODE

To assist the Committee with the review of the Planning Code the Chairman of the Planning Committee, Councillor H.A. Thomson, had been invited to attend and take part in the discussion. Councillor Mrs M. Rough attended as an observer.

The Committee continued its discussion on the review of the Planning Code.

To assist the Committee the Monitoring Officer had circulated with the agenda a copy of the Planning Code identifying the suggested changes made to date. The Committee discussed the document page by page and made comments for the Monitoring Officer to take on board and amend for further consideration.

In general terms the committee discussed the issue of public perception of all those involved in the planning process and the need to avoid the perception of pre determination whilst at the same time allowing full and frank debate of all planning applications. The committee also considered the two recommendations contained in the Trevor Roberts Associates report which were relevant to the Planning Code and covered:

- (1) Consider ceasing the pre committee meeting without officers; and
- (2) Amend the Planning Code to enable greater pre committee discussion between councillors and officers.

**RESOLVED** that the Monitoring Officer revise the Planning Code as indicated at the meeting and email the revisions to all members of the Standards Committee for final comments prior to the Planning Code being submitted to the Council meeting on 21 October 2010 for approval.

## **PLANNING – AMENDMENTS TO SCHEME OF DELEGATION**

**Standards Committee: 17 March 2011, Cabinet: 22 March 2011, Council:  
28 April 2011**

### **Report of Deputy Chief Executive REPORT SUMMARY**

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

It will provide a transparent scheme of delegation which is easily understood, and will allow the planning committee to focus on those issues which are most contentious locally.

#### **Purpose of Report**

To set out the proposed changes to the scheme of delegation regarding planning applications, and explain what impact these changes will have.

#### **Key Issues**

- Council Constitution
- Scheme of Delegation
- Planning Committee

#### **Financial Implications**

There will be a very slight reduction in cost of running a planning committee. Minimal officer time saved will be re-allocated to deal with other priorities (condition monitoring, applications).

**Corporate Priority 5.A Cleaner and Greener Environment**

#### **Officer Recommendations**

**The Cabinet is asked to recommend to the Council, as follows:**

**That Option 2 as set out in paragraph 3.2 be adopted as the new scheme of delegation for dealing with planning matters.**

**Report Author: Heather Morgan, Head of Planning & Housing Strategy  
(01784) 446352**

**Area of Responsibility: Nigel Lynn, Deputy Chief Executive (01784) 446300**

**Cabinet member: Cllr Smith–Ainsley**

## MAIN REPORT

### 1. BACKGROUND

- 1.1 The current scheme of delegation for planning matters has evolved incrementally over time. At the moment, it requires more than two residential units to be determined by the committee (unless the application is refused).
- 1.2 The Trevor Roberts Associates (TRA) report commented that the scheme was very complex (seven pages). It is not easy for the public, applicants or agents to understand. This highlights the perception that the service does not want to be 'understood', and that it prefers to 'cling on to its professionalism' at the expense of transparency.
- 1.3 A key theme running through the TRA report was the critical need to make sure the service is easily understood. A revised scheme of delegation is a good example of where significant improvements could be made. This is also an opportunity to review those matters which go to committee, allowing councillors to focus on the larger scale applications which affect most people, and have the greatest potential impact on the wider community. Critically however, it will still allow councillors to 'call in' matters of more local concern. It will also tie in with the coalition governments' drive towards localism.
- 1.4 86% of applications in 2008-2010 were dealt with by officers (average 915), with 14% (average 128) determined by planning committee. A minimum of 90% is considered best practice. This allows speed of service whilst maintaining effective democratic scrutiny.

### 2. KEY ISSUES

- 2.1 The TRA report sets out best practice and recommends that all basic day to day development control functions should be delegated to officers, with only specified 'exceptions' being referred to the Committee.
- 2.2 This would be a significant shift away from the current system which gives a list of schemes which *can* be dealt with by officers.
- 2.3 Critical to any change is the extent to which exceptions apply. The purpose of this report is to set out the possible options, the justification for any change and impact it would have on the Planning Committee.

### 3. OPTIONS ANALYSIS

- 3.1 Three options are set out below. Option 1 is based on the TRA report. Option 2 is a variation, and applies common practice in other councils that only major applications should automatically be considered by Planning Committee (if recommended for approval). A major application is defined as an additional 10 residential units or more, or over 1,000m<sup>2</sup> of commercial floor space. Option 3 recognises that the borough has a number of smaller infill developments. **Option 2 is the preferred option.**
- 3.2 **Appendix 1** sets out the suggested delegations for each option.

#### Option 1

- i) "Member call in" within the approved scheme
- ii) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning

Committee on planning grounds, or where there is significant public concern/it is very contentious

- iii) Where the application is submitted by an officer of the Council
- iv) Where an application is submitted by a councillor

### **Option 2**

- i) "Member call in" within the approved scheme
- ii) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern/it is very contentious
- iii) Where the application is submitted by an officer of the Council
- iv) Where an application is submitted by a councillor
- v) Approval of over **10** net additional residential units whether by change of use or new build (major application)
- vi) Approval of over 1,000m<sup>2</sup> net additional floor space whether by change of use or new build (major application)
- vii) Recommendation of no objection for over 1,000m<sup>2</sup> net additional floor space/ and or land area in connection with Surrey County Council minerals and waste applications
- viii) Recommendation of no objection for extension of time limits for Surrey County Council minerals and waste applications
- ix) Confirmation of Tree Preservation Orders (TPO's)
- x) Enforcement which relates to potential loss of a home (Human Rights Act)

This is contingent upon a formal process being set up to 'flag up' to councillors those delegated applications between five and ten units which are contentious in any way. This will assist councillors in making an informed decision on whether to 'call in' an application.

### **Option 3**

- i) "Member call in" within the approved scheme
- ii) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern/it is very contentious
- iii) Where the application is submitted by an officer of the Council
- iv) Where an application is submitted by a councillor
- v) Approval of over **5** net additional residential units whether by change of use or new build (major application)
- vi) Approval of over 1,000m<sup>2</sup> net additional floor space/and or land area whether by change of use or new build (major application)

- vii) Recommendation of no objection for over 1,000m<sup>2</sup> net additional floor space in connection with Surrey County Council minerals and waste applications
- viii) Recommendation of no objection for extension of time limits for Surrey County Council minerals and waste applications
- ix) Confirmation of TPO's
- x) Enforcement which relates to potential loss of a home (Human Rights Act)

#### **4. PROPOSALS**

##### **Planning applications**

- 4.1 All of the options will reduce the Planning Committee agenda. Councillors will be able to focus on the more complex/high profile applications, or those which have been called to Committee. The applications will either be those with a significant level of public interest, or larger schemes where councillors have the greatest scope to 'add value'. More time can be spent debating the applications, which will emphasize the importance the Council and the Committee place on such issues. Critically however, all the schemes will still allow councillors to 'call in' applications to Committee for discussion and debate
- 4.2 The revisions will be much easier for the public to understand. We can be more transparent in the way we work, and minimise any concerns that the Council are seeking to 'hide' matters. It will also give applicants and developers more certainty, which is very important in this current economic climate.
- 4.3 An assessment has been undertaken of all committee decisions from January 2008 to October 2010

##### **Impact - Option 1**

- 4.4 The average number of applications/reports being considered by Committee would be 47 each year (a 63% drop from current levels).
- 4.5 This would increase officer delegation up to 95% with 5% determined by Planning Committee. This would be a 9% shift (5% over the best practice guideline).

##### **Impact - Option 2**

- 4.6 The average number of applications/reports being considered by Committee would be 84 each year (a 36% drop from current levels).
- 4.7 This would increase the officer delegation up to 91% with 9% being determined by Planning Committee. This would be a 5% shift (marginally over the best practice guideline).

##### **Impact - Option 3**

- 4.8 The average number of applications/reports being considered by Committee would be 91 each year (a 28% drop from current levels).
- 4.9 This would increase officer delegation up to 90% with 10% being determined by planning committee. This would be a 4% shift (in line with best practice guideline).
- 4.10 Option 2 is the preferred option as it clearly links to the split between major and minor planning applications. This is easily understood by everyone, and the delegation level will be virtually in line with best practice.



## **Enforcement**

- 4.11 The TRA report recommended that all matters be delegated to the officers, but that regular reporting was used to update members on cases, and progress being made. The Committee is now receiving a quarterly report. It is recommended that the key delegation arrangements are spelled out, so there is no doubt about the powers and the delegated authority involved.
- 4.12 TRA advise the delegation of authority to take various types of enforcement action is critical, since this is most subject to most litigation and challenge. An obvious and frequent challenge to enforcement action is that the officers do not have the authority to take the action involved. Additionally, it is often necessary to take enforcement action quickly (not just in emergency situations), so maximum delegation to officers so that they can act quickly is sensible.

### **Impact – all three Options**

- 4.13 Between January 2008 and October 2010, there were 53 requests for enforcement action. This does not include retrospective planning applications where enforcement action was also requested (the figure would then be 60).
- 4.14 In every case except one, the recommendation was agreed. The only exception was a request for a deferral of three months to allow discussions with the applicant. In the vast majority of cases there was very little debate on the item, demonstrating that the Committee was supportive of the decisions being made.

## **Monitoring**

- 4.15 In view of the importance of the delegation scheme in ensuring a proper balance is struck between democratic scrutiny/accountability, there needs to be systems for monitoring the quality and consistency of delegated decisions taken by officers acting on behalf of the authority. It is therefore suggested that in tandem with a changed scheme of delegation the following takes place.
- i) Bi-annual review of delegated decisions (planned June and December 2011)
  - ii) Annual Planning tour of recent developments (planned Summer 2011)
  - iii) Quarterly s106 monitoring reports (in place since July 2010)
  - iv) Quarterly Enforcement monitoring reports (in place since March 2010)

### **Impact**

Two of the four reports already go to Committee. The additional work required for the bi-annual review and the annual tour will be more than offset by the time saved by officers in writing and checking committee reports.

## **Level of officer delegation**

- 4.16 The current scheme delegates most of the responsibility to the Deputy Chief Executive. It is appropriate to delegate the authority to the lowest appropriate level, as is the case in Environmental Health and Building Control.
- 4.17 It is recommended all planning and enforcement functions be delegated to the Head of Planning and Housing Strategy, and prosecution matters to the Head of Corporate Governance. Where appropriate, the Head of Planning and Housing Strategy will authorise delegations to the Deputy and Assistant Heads of Planning and Principal Planning officers to ensure efficient service delivery.

## **5. BENEFITS AND SUSTAINABILITY**

- 5.1 In terms of staff time (officers) it takes around twice as long for applications to be dealt with via the Committee route as opposed to the delegated route. An assumption has been made that a delegated report takes on average one day (7 hours) and a committee report two days (14 hours for a planning committee report). This may in reality be one and a half days for a straightforward call in application, up to two and a half days for a more complex application with a lot of plans.
- 5.2 The main benefit will be that less time needs to be spent on pulling together committee plans for the agenda and updates of late information. There are also likely to be less refinements to delegated reports than committee reports. On this assumption, implementation of option 2 could potentially save up some officer time.
- 5.3 The TRA report suggested that in order to better meet the needs of the public and councillors that considerably more resources should be put into proactive enforcement. Up to three additional posts were originally recommended. It is accepted that in the current economic climate that this is not a realistic prospect. However, if the revised scheme of delegation does achieve the anticipated time savings, then this needs to be used to undertake some of the more proactive work. In particular, the additional time could be used in monitoring difficult/problem sites, especially in relation to planning conditions.
- 5.4 Currently the Assistant Head of Planning checks all the reports due to go to Committee. The post holder also undertakes a number of other duties in connection with the Committee. It is not intended that this will change. Overall, the adoption of option 2 would result in a very modest reduction of up to 7% in his workload. Whilst this is not significant, it would give extra capacity in terms of giving more time to that post holder to more effectively manage the service. This was one of the key recommendations in the TRA report.
- 5.5 There would be a negligible impact on the planning support team in terms of the time saved in compiling and pulling together the report. A similar situation would exist with Committee Services. It is the processes and procedures around a planning committee which take the time, rather than the number of items on a committee agenda. Meetings would still need to take place on a four weekly basis (so it would not be possible to reduce the overall number of committees for example).
- 5.6 Adopting any of the three options would have saved the enforcement team an average of around 370 hours between January 2008 and October 2010 (average of 120 hours pa). This would give a very modest 7% of extra time. Nevertheless, this would assist in ensuring that more time was available to enforce. In addition to the time saving, delegating such matters to officers would help speed up the progress of enforcement in a number of cases, as there would be no need to delay and wait for the next committee cycle for a decision to be made.

## **6. FINANCIAL IMPLICATIONS**

- 6.1 Adoption of option two would reduce the number of applications at Committee by 36%. It is difficult to be precise about the potential savings as Planning Committee agendas vary in size. However, on average it is estimated that around £1,150pa could be saved in printing/paper costs if option 2 were adopted.

6.2 A 36% reduction in the number of applications at Committee would shorten their length. This, combined with the recently instigated 'call over' meeting at 6.30pm, should mean that meetings finish perhaps an hour earlier in the evening. Again it is difficult to predict precise savings. However it will assist in the general thrust of the Council to reduce evening use of Knowle Green (to reduce running costs).

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

7.1 The scheme of delegation will need to be legally drafted (which is the same for all aspects of the Constitution).

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

8.1 The exceptions approach will in many respects reduce the level of risk as it will be crystal clear which applications will go to Committee. Currently there is a small risk that decisions could be made at the wrong level, as the scheme is difficult to interpret in some places.

8.2 There is a real risk that with the revised scheme of delegation there will be greater pressure on councillors from the local community to call in' an application. Whilst councillors will be able to make that decision, one consequence of the revision may well be to increase the number of 'called in' applications. This may well negate some of the time savings from the new system.

8.3 The impact can only be assessed after the changes have been implemented and monitored. It is for this reason that the potential time savings for officers cannot easily be quantified.

## **9. TIMETABLE FOR IMPLEMENTATION**

9.1 The new Constitution is planned to start three days after the elections which is 9 May 2011.

**Report Author: Heather Morgan, Head of Planning and Housing Strategy  
(01784) 446 352**

**Background Papers:**

## DEFINITIONS OF THE EXCEPTIONS CATEGORIES

### **“Member call in” within the approved scheme**

- Applies to all members
- Request should be submitted in writing, including by email
- Request should be submitted within 21 days from circulation of the weekly list; Requests outside the prescribed time limits should not be acceded to
- Requests should be justified with reasons; these reasons need only be “reasonable”, they do not need to be “planning reasons”
- Name of the councillor and the reasons for the call-in should be reported to the Committee
- The reasons for an application being reported to the Planning Committee should always be explained in the report on the application

### Change from the current scheme of delegation

Yes. It is suggested the member period for call in from 5 weeks to 4 weeks.

### Impact on the length of the committee agenda

None.

### Justification

This is in line with the vast majority of other Councils, and is advocated by TRA. Councillors are given details of all applications electronically via the weekly list. They are able to review this and discuss with officers any applications which cause them a particular concern.

Members of the public usually contact Councillors as soon as they receive their notification letters (which may well go out a few days before the weekly list is published). Officers usually get requests early on in the process.

The benefit of the 28 day approach is that officers can deal with the applications in a minimum of five weeks which provides a much quicker turn-round for mainly house holder applications. This will provide a higher and quicker level of service to the residents of the borough.

**Where the officers decide, without needing to consult any member, that an application should be submitted to the Planning Committee on planning grounds (or where there is significant public concern or it is very contentious)**

- Referrals under this heading should be justified by planning reasons reported to the Committee. In exceptional circumstances, other reasons including public concern/interest may be acceptable.
- Referrals by Head, Deputy Head or Assistant Head of Planning

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Where the application is submitted by an officer of the Council or by a councillor**

- Any member of staff (or spouse/partner of) reporting to the Head of Planning
- Any member of staff (or spouse/partner of) at Manager level or above within Spelthorne Borough Council
- Any Councillor (or spouse/partner of) of the Council
- Any Council application

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Approval of over 10 net additional residential units whether by change of use or new build**

- Reflects definition of a 'major' planning application where the Council has 13 weeks to make a decision, and has to formally advertise the proposal.
- Applies to all types of residential unit

Change from the current scheme of delegation

Yes.

Impact on the length of the committee agenda

There will be a reduction in the number of smaller scale residential applications.

None

Justification

It will allow members to focus on the more complex and high profile applications, or those which officers/members have called to committee. This will almost certainly be those with a significant level of public interest, or larger schemes where members have the greatest scope to 'add value'.

More time can be spent debating the applications, which will emphasize to the general public the importance the Council and the Committee place on such issues.

**Approval of over 5 net additional residential units whether by change of use or new build (major application)**

Reflects local circumstances as there are limited opportunities for large scale residential development

Change from the current scheme of delegation

Yes.

Impact on the length of the committee agenda

There will be a reduction in the number of smaller scale residential applications.

Justification

It will allow members to focus on the more complex and high profile applications, or those which officers/members have called to committee. This will almost certainly be those with a significant level of public interest, or larger schemes where members have the greatest scope to 'add value'.

It will also cover those small scale infill schemes which often cause concern in the local area.

More time can be spent debating the applications, which will emphasize to the general public the importance the Council and the Committee place on such issues.

**Approval of over 1,000m<sup>2</sup> net additional floor space whether by change of use or new build (major application)**

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Recommendation of no objection for over 1,000m<sup>2</sup> net additional floor space in connection with Surrey County Council minerals and waste applications**

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Recommendation of no objection for extension of time limits for Surrey County Council minerals and waste applications**

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Confirmation of TPO's**

Change from the current scheme of delegation

No

Impact on the length of the committee agenda

None

**Enforcement which relates to potential loss of a home (human rights act)**

- When the decision made will potentially make someone homeless and the impact of the Human Rights Act has to be determined.

- Will apply to mobile homes, caravans, structures /outbuildings in gardens or on commercial sites
- Chairman, vice chairman and ward councillors will be advised when a notice is being served and the details.

#### Change from the current scheme of delegation

Yes.

#### Impact on the length of the committee agenda

There will be a reduction in the overall number of reports. However, these do not usually take up a significant amount of committee time in terms of the debate which takes place.

#### Justification

The need for committee approval in the vast majority of cases means that the period for taking action is extended. Depending on the committee cycle, this can potentially build in a four week delay. Councillors and the public want the service to be more proactive, and being able to service notices in a quick and timely manner will help to achieve this. It will help reduce the overall time taken to resolve matters.

None of the recommendations made in the last three years have been altered by the planning committee.

Ward councillors and the chairman/ vice chairman will be advised when notices are issued so they are fully up to speed with the issues in their locality.



**Appendix – Option 1**

Function	Authorised
<b>Planning Applications</b>	
<p><b>13.6 To determine all applications for planning permission under Part III of the Town and Country Planning Act 1990 EXCEPT those applications to which any of the following below apply AND subject to no decisions being issued within 21 days of the application’s appearance on the Publicity Schedule;</b></p> <p>(a) Where no Member representations are received in writing within the specified “call in” period within the approved scheme</p> <p>(b) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern/it is very contentious</p> <p>(c) Where the application is submitted by an officer of the Council</p> <p>(d) Where an application is submitted by a councillor</p>	<p><b>Deputy Chief Executive</b></p>

## Appendix – Option 2

Function	Authorised
<b>Planning Applications</b>	
<p><b>13.6 To determine all applications for planning permission under Part III of the Town and Country Planning Act 1990 EXCEPT those applications to which any of the following below apply AND subject to no decisions being issued within 21 days of the application’s appearance on the Publicity Schedule;</b></p> <p>(a) Where no Member representations are received in writing within the specified “call in” period within the approved scheme</p> <p>(b) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern/it is very contentious</p> <p>(c) Where the application is submitted by an officer of the Council</p> <p>(d) Where an application is submitted by a councillor</p> <p>(e) Where approval is for more than <b>10</b> (ten) net additional residential units whether by change of use or new build (major application)</p> <p>(f) Where approval is for more than 1,000m<sup>2</sup> net additional floor space whether by change of use or new build (major application)</p> <p>(g) Where officer recommendation is of “no objection” for over 1,000m<sup>2</sup> net additional floor space in connection with Surrey County Council minerals and waste applications</p> <p>(h) Where officer recommendation is of “no objection” for extension of time limits for Surrey County Council minerals and waste applications</p> <p>(i) Confirmation of Tree Preservation Orders (TPO’s)</p> <p>(j) Where planning enforcement relates to potential loss of a home (Human Rights Act)</p>	<p><b>Deputy Chief Executive</b></p>

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## Appendix – Option 3

Function	Authorised
<p><b>Planning Applications</b></p>	
<p><b>13.6 To determine all applications for planning permission under Part III of the Town and Country Planning Act 1990 EXCEPT those applications to which any of the following below apply AND subject to no delegated decisions being issued within 21 days of the application's appearance on the Publicity Schedule;</b></p> <p>(a) Where no Member representations are received in writing within the specified "call in" period within the approved scheme</p> <p>(b) Where the officers decide, with the agreement of the Chairman of the Planning Committee, that an application should be submitted to the Planning Committee on planning grounds, or where there is significant public concern/it is very contentious</p> <p>(c) Where the application is submitted by an officer of the Council</p> <p>(d) Where an application is submitted by a councillor</p> <p>(e) Where approval is for more than 5 (five) net additional residential units whether by change of use or new build (major application)</p> <p>(f) Where approval is for more than 1,000m<sup>2</sup> net additional floor space whether by change of use or new build (major application)</p> <p>(g) Where officer recommendation is of "no objection" for over 1,000m<sup>2</sup> net additional floor space in connection with Surrey County Council minerals and waste applications</p> <p>(h) Where officer recommendation is of "no objection" for extension of time limits for Surrey County Council minerals and waste applications</p>	<p><b>Deputy Chief Executive</b></p>

- |   |  |
|---|--|
| (i) Confirmation of Tree Preservation Orders (TPO's)                                  |  |
| (j) Where planning enforcement relates to potential loss of a home (Human Rights Act) |  |

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## **LOCALISM BILL**

### **Report of the Assistant Chief Executive**

#### **BRIEFING PAPER**

#### **1. BACKGROUND**

- 1.1 The Localism Bill was published in December 2010. It sets out a series of proposals aimed at achieving a substantial and lasting shift in power away from central government and towards local people.
- 1.2 In his Foreword to the Bill, Greg Clark, Minister for Decentralisation, states that “we have already begun to pass power back to where it belongs. We are cutting central targets on councils, easing the burden of inspection, and reducing red tape. We are breaking down the barriers that stop councils, local charities, social enterprises and voluntary groups getting things done for themselves”.
- 1.3 The proposals include new freedoms and flexibilities for local government; new rights and powers for communities and individuals; reform aimed at making the planning system more democratic and more effective, and reform to ensure that decisions about housing are taken locally. These are set out in paragraphs 2 – 6 below. Many of the proposals, especially those decentralising power to local communities/neighbourhoods, have been dubbed ‘the Big Society’.
- 1.4 The Bill consists of 405 pages, 208 clauses, 24 schedules and at least 142 order and regulation making powers for central government to direct how localism will work, which is rather ironical considering the aim is to cut back bureaucracy and decentralise.

#### **2. NEW FREEDOMS AND FLEXIBILITY FOR LOCAL GOVERNMENT**

- 2.1 The Localism Bill contains a number of proposals to give local authorities new freedoms and flexibility in order to give scope for more innovation and better value for the taxpayer’s money.
- 2.2 **General power of competence**  
Local authorities’ powers and responsibilities are defined by legislation. In simple terms, they can only do what the law says they can.
- 2.3 The Localism Bill will change this emphasis by including a “general power of competence.” It will give local authorities the legal capacity to do anything that an individual can do that is not specifically banned by other laws: they will not, for example, be able to impose new taxes, as other laws make clear they cannot.
- 2.4 The new general power will give councils more freedom to work with others in new ways to drive down costs and, the government hopes, increased confidence to do creative, innovative things to meet local people’s needs. In the past Councils have asked for these wider powers.
- 2.5 **Abolition of the Standards Board**  
Currently, all local authorities must, by law, have a standards committee to oversee the behaviour of their councillors and receive complaints. A central body, the Standards Board for England, regulates each of these committees.
- 2.6 In the Localism Bill, the Government will abolish the Standards Board regime. Instead, it will become a criminal offence for councillors to deliberately withhold or misrepresent a personal interest. This means that councils will not be obliged to

spend time and money investigating trivial complaints, while councillors involved in corruption and misconduct will face appropriately serious sanctions. It is hoped this will provide a more effective safeguard against unacceptable behaviour.

## **2.7 Clarifying the rules on predetermination**

In parallel with the abolition of the Standards Board, the Government intends to use the Localism Bill to clarify the rules on “predetermination.” These rules were developed to ensure that councillors came to council discussions – on, for example, planning applications – with an open mind.

2.8 The Localism Bill will make it clear that it is proper for councillors to play an active part in local discussions, and that they should not be liable to legal challenge as a result although they must still not predetermine their position. This will help them better represent their constituents.

## **2.9 Directly elected mayors**

The Localism Bill will give more cities the opportunity to decide whether they want a mayor. People in other areas of the country will be able to use existing laws to call for their own referendum on whether to have an elected mayor.

## **2.10 London**

The Localism Bill will pass greater powers over housing and regeneration to local democratically elected representatives in London. It will empower the democratically elected Mayor to carry on housing investment activities currently carried out by the Homes and Communities Agency, and the economic development work done by the London Development Agency.

# **3. NEW RIGHTS AND POWERS FOR COMMUNITIES**

3.1 In addition, the Government wants to pass significant new rights direct to communities and individuals, making it easier for them to get things done and achieve their ambitions for the place where they live. It is this part of the legislation that captures the essence of The Big Society. Proposals include:

## **3.2 Community right to challenge**

The Government thinks that innovation in public services can offer greater value for taxpayers’ money and better results for local communities.

3.3 The Localism Bill will give voluntary and community groups the right to express an interest in taking over the running of a local service. The local authority must consider and respond to this challenge. The aim is to make it easier for local groups with good ideas to put them forward and drive improvement in local services.

## **3.4 Community right to bid**

Proposals in the Localism Bill will require local authorities to maintain a list of assets of community value. Communities will have the opportunity to nominate for possible inclusion the assets that are most important to them. When listed assets come up for sale or change of ownership, community groups will have time to develop a bid and raise the money to buy the asset when it comes on the open market. This will help local communities keep much-loved sites in public use and part of local life.

## **3.5 Local referendums**

The Localism Bill will give local people the right to suggest votes on any local issue that they think is important. Local authorities and other public bodies will be required to take the outcome into account as they make their decisions.

## **3.6 Right to veto excessive Council Tax rises**

The Localism Bill will give local communities a greater say. The Secretary of State and the House of Commons will agree on a “ceiling” for Council Tax rises. If a local

authority proposes to raise taxes faster than this rate, local people will have the right to approve or to veto the rise in a referendum. This means that local authorities will need to convince local voters of the case for significant rises in local taxes

#### **4. REFORM TO THE PLANNING SYSTEM**

4.1 The Localism Bill contains proposals to make the planning system clearer, more democratic and more effective.

##### **4.2 Abolition of regional strategies**

The Secretary of State has already sought to abolish regional strategies. The Localism Bill will get rid of the statutory requirement for regional strategies.

4.3 The Government thinks that this centrally-driven approach to development is bureaucratic and undemocratic. Rather than helping get new houses built, it has had the effect of making people feel put upon and less likely to welcome new development.

##### **4.4 Neighbourhood planning**

Instead of local people being told what to do, the Government thinks that local communities should have genuine opportunities to influence the future of the places where they live. The Bill will introduce a new right for communities to draw up a “neighbourhood development plan.”

4.5 Neighbourhood planning will allow people to come together through a local parish council or neighbourhood forum and say where they think new houses, businesses and shops should go – and what they should look like. Local communities would be able to grant the equivalent of full or outline planning permission in areas where they most want to see new homes and businesses, making it easier and quicker for development to go ahead.

4.6 Provided a neighbourhood development plan is in line with national planning policy, with the strategic vision for the wider area set by the local authority, and with other legal requirements, local people will be able to vote on it in a referendum. If the plan is approved by a majority, then the local authority must bring it into force.

4.7 Local planning authorities will be required to provide technical advice and support as neighbourhoods draw up their plans.

4.8 At present, there is no definition for what a neighbourhood is and the relationship of a neighbourhood plan to the LDF. There would also be a cost to each Authority to develop some plans – forecasts suggest anything between £17,000 - £63,000 per plan.

##### **4.9 Community right to build**

As part of neighbourhood planning, the Bill will give groups of local people the ability to bring forward small developments. These might include new homes, businesses and shops. The benefits of the development, for example, profits made from letting the homes, will stay within the community.

##### **4.10 Requirement to consult communities before submitting very large planning applications**

To further strengthen the role of local communities in planning, the Bill will introduce a new requirement for developers to consult local communities before submitting planning applications for very large developments (in excess of 200 houses or 10,000 sq.m. of non-residential space). The aim is that this will give local people a chance to comment when there is still genuine scope to make changes to proposals.

##### **4.11 Strengthening enforcement rules**

The Localism Bill will strengthen planning authorities’ powers to tackle abuses of the



planning system. It will prevent both appeals to enforcement action and submission of a planning application for the same work – people will have to choose one or other. Enforcement action can be taken after normal limits against work that has been deliberately concealed. Various penalties are proposed to be increased.

#### **4.12 Reforming the community infrastructure levy**

The Localism Bill proposes the community infrastructure levy (CIL) will become the main way of funding development related infrastructure while Section 106 agreements will be limited to affordable housing provision. CIL will allow the money raised to be spent on maintaining, as well as building new infrastructure. It will require local authorities to set the rate that developers should pay in different areas. And crucially, the Bill will give the Government the power to require that some of the money raised goes directly to the neighbourhoods where development takes place. The Government says that this will help ensure that the people who say “yes” to new development feel the benefit of that decision although it could have a detrimental effect on strategic decisions made by the Council.

#### **4.13 Reform the way local plans are made**

The Government thinks it is important to give local planning authorities greater freedom to get on with this important job without undue interference from central government. The Localism Bill will limit the discretion of planning inspectors to insert their own wording into local plans. It will also ensure that rather than focusing on reporting plans’ progress to central government, authorities focus on reporting progress to local communities. Again, the definition of local community and its link to a neighbourhood are also unclear.

#### **4.14 Duty to cooperate**

Not all planning decisions can, or should, be made at a neighbourhood or local level. In many cases there are very strong reasons for neighbouring local authorities, or groups of authorities, to work together on planning issues in the interests of all their local residents.

4.15 The Government thinks that local authorities and other public bodies should work together on planning issues in ways that reflect genuine shared interests and opportunities to make common cause, e.g. environmental issues (like flooding), public transport networks or major new retail parks. The duty will require local authorities and other public bodies to work together on planning issues although this could conflict with the involvement of local people and their neighbourhood plans.

#### **4.16 Nationally significant infrastructure projects**

The Localism Bill will merge the Infrastructure Planning Commission with the Planning Inspectorate and restore its responsibility for taking decisions on major infrastructure projects to Government Ministers. It will also ensure the National Policy Statements, which will be used to guide decisions by Ministers, can be voted on by parliament. Ministers intend to make sure that major planning decisions are made under the new arrangements at least as quickly as under the present system.

### **5. REFORM TO ENSURE THAT DECISIONS ABOUT HOUSING ARE TAKEN LOCALLY**

5.1 Social housing provides eight million people in England with a decent home at an affordable rent. As the Cabinet is aware, housing makes an immense difference to people’s health, happiness and quality of life, and have significant wider consequences for their families, neighbours and employers.

- 5.2 The Localism Bill proposes reforms that will mean more decisions about housing are taken locally, and make the system fairer and more effective although there is a risk that it will lead to less house building.
- 5.3 **Social housing tenure reform**  
Proposals in the Localism Bill will allow for more flexible arrangements for people entering social housing in the future. Social landlords will be able to grant tenancies for a fixed length of time. The minimum length of tenancy will be two years, and there is no upper limit on the length of tenancy. Councils will continue to be able to offer lifetime tenancies if they wish. More flexible tenancies will allow social landlords to manage their social homes more effectively and fairly, and deliver better results for local communities.
- 5.4 **Social housing allocations reform**  
The Bill will give local authorities greater freedom to set their own policies about who should qualify to go on the waiting list for social housing in their area. This means that they will be able, if they wish, to prevent people who have no need of social housing from joining the waiting list. Authorities will continue to be obliged to ensure that social homes go to the most vulnerable in society and those who need it most.
- 5.5 **Reform of homelessness legislation**  
The Localism Bill will let local authorities meet their homelessness duty by providing good quality private rented homes. This option could provide an appropriate solution for people experiencing a homelessness crisis, at the same time as freeing up social homes for people in real need on the waiting list.
- 5.6 **Reform of council housing finance**  
The Localism Bill will change the way social housing is funded to pass more power to a local level.
- 5.7 In the future, instead of having to send the money raised by rent to central government and wait to see each year what share they get allocated back, councils will be able to keep the rent and use it locally to maintain their social homes. This will give them a more predictable and stable basis to plan for the long term.
- 5.8 **National Homeswap Scheme**  
The Localism Bill will pave the way for a national home swap scheme. This would enable people who would like to swap their social home to access details of all other tenants who may be a suitable match. This has the potential to enable social tenants to find a home that better meets their needs and to exercise greater control over their lives.
- 5.9 **Reform of social housing regulation**  
The Bill will reform the way that social housing is regulated. The Bill will provide social tenants with stronger tools to hold their landlords to account. Landlords will be expected to support tenant panels – or equivalent bodies – in order to give tenants the opportunity to carefully examine the services being offered. The Bill will also abolish the Tenant Services Authority and transfer its remaining functions to the Homes and Communities Agency.
- 5.10 The Bill will also change the way that complaints about social landlords are handled. Currently, there are two separate ombudsmen (the Local Government Ombudsman and the Independent Housing Ombudsman) handling social tenants' complaints about their landlord. In the future, a single watchdog (the Independent Housing Ombudsman) specialising in complaints about social housing will ensure greater consistency across the sector.

## **6. MISCELLANEOUS**

- 6.1 The bill also includes proposals that Councils, regardless of their size, can choose to retain their current executive arrangement, return to a committee system or operate other arrangements, prescribed by the Secretary of State. Where a Council decides to retain its executive arrangements, the 4 year term of office of the Leader will, subject to regulations, no longer be prescribed and Councils may choose whichever term they feel is appropriate.
- 6.2 The LGA are very concerned that a general power has been added without consultation that the Secretary of State can order English Councils to contribute to the UK's obligation to pay an EU fine if the Council can be shown to have contributed to the fine being imposed.
- 6.3 Apart from 6.2 and 6.3 above, the LGA generally welcome the thrust of the Bill and the government's aim to decentralise power and decision making although there are concerns about the role of Members in the proposed local decision-making process.
- 6.4 Some of the Localism Bill also links in with the Department of Health's approach to the creation of Health & Wellbeing Boards to procure local approaches to health issues.

## **7. CONCLUSION**

- 7.1 At this stage a lot more detail is required before a decision can be made on the full extent to which the various measures might benefit local residents and affect the roles of the Council and Members. The Bill could also be amended during its progress through Parliament.
- 7.2 Spelthorne can already point to a number of existing initiatives that are in line with the Government new aims:-
- The Council has many volunteers who help deliver services such as meals on wheels and healthy walks
  - The self management of local facilities such as village halls / bowls clubs
  - Promotion of volunteering through Voluntary Action in Spelthorne
  - Spelthorne's neighbourhood grants scheme through which ward councillors support community projects
  - Surrey County Council's members allowance for community projects
  - Spelthorne's participation in SURREYi which will host public data on a single website for the county
  - Enabling residents to take an active role in supporting their neighbourhood such as through the Neighbourhood Watch and Residents Association
  - Encouraging pre-application consultation on all planning applications particularly large schemes
  - All play facilities are processed through local childrens group, including the specification for the play facility itself (eg Liveability).

This is a quickly changing agenda and the Cabinet will be kept updated as well as progress being posted on the Council's website.

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**Cabinet Member: Councillor John Packman, Leader**

**Background Papers:**  
**The Localism Bill**



## **MAINTAINING HIGH ETHICAL STANDARDS IN LOCAL GOVERNMENT**

The Localism Bill published on 13<sup>th</sup> December contains proposals to abolish the Standards for England regime. Whilst subject to Parliament approving the necessary legislation, the changes can be summarised as Standards for England (formally the Standards Board for England) ceasing to operate, councils no longer being required to have a local standards committee, the national code of conduct for elected members being dispensed with and council's being allowed to adopt voluntary codes of conduct.

Following the abolition of the standards regime, councils will no longer have a single body of law to refer to for dealing with elected member conduct but will, instead, be able to call upon a range of remedies, including existing criminal and civil law provisions and those provisions contained in the Localism Bill. This paper seeks to summarise the proposals contained within the Bill and outline those provisions available to authorities to call upon. The paper covers the following:

- Summary of changes proposed in the Bill
- The position of the Nolan Principles
- Registering interests
- Fiduciary duty of councillors
- Criminal and civil law including discrimination and electoral offences
- Local Government Ombudsman
- Audit Commission powers
- The common law position of bias, predisposition and predetermination

The Local Government Group acknowledges the valuable contributions of the senior members of the Association of Council Secretaries and Solicitors (ACSeS) in helping to produce this paper.

## **SUMMARY OF CHANGES PROPOSED IN THE BILL**

The proposals outlined in the Bill are as follows:

- The Relevant Authorities (General Principles) Order 2001, which sets out the principles which govern the conduct of members and co-opted members of relevant authorities in England and police authorities in Wales, will be revoked
- The Local Authorities (Model Code of Conduct) Order 2007 (S.I 2007/1159) which prescribes the model code of conduct to apply to members of relevant authorities will be revoked
- The requirement for local authorities to have standards committees will be abolished
- Standards for England will be abolished. Established by the Local Government Act 2000 and the regulator for local authority standards committees, the Standards Board requires primary legislation to abolish it and its legislative functions. None of the Standards Boards functions will be transferred to other bodies.
- The First-tier Tribunal (Local Government Standards in England), the independent judicial tribunal established as a disciplinary body to hear and determine references and appeals concerning the conduct of local authority councillors, will lose its jurisdiction over the conduct of local authority members
- Elected members will be required to continue to register and declare personal interests and will not be allowed to use their position improperly for personal gain. The government intends that wilful failure to comply with these requirements will constitute a criminal offence.
- The requirement for local authorities to adopt a model code of conduct and for local authority members to abide by that code will be abolished. However, local authorities will be free to adopt their own, voluntary code of conduct should they so wish.
- The requirement for councils to maintain a standards committee will be abolished. However, local authorities will be free, should they choose, to establish voluntary standards committees to consider complaints about the conduct of elected and co-opted members. Such committees will, according to councils' local constitutions, be able to censure but will not be able to suspend or disqualify members from council membership.

It is anticipated that the Bill will receive Royal Assent in late 2011. The present conduct regime (a model code governing local authority members' conduct and enforced through local authority standards committees, regulated in turn by the Standards for England), will continue to function in a normal manner, considering, investigating and determining allegations of misconduct, until a fixed date ("the appointed day"), probably two months after the Bill receives Royal Assent.

This means that until the appointed day, an allegation of misconduct can be made but that after the appointed day no further allegations of misconduct can be made under the Standards for England regime. It also means that at the appointed day, allegations will be in the process of investigation and, further, that appeals against sanctions will be pending. Transitional measures are to be put in place to address this and the way in which they will operate is detailed in the following paragraphs:

- Any cases in the system at the appointed day will make their way through a transitional regime. This would meet the expectation of those who had made allegations that these would be properly dealt with. It also provides an elected member who has had an allegation made against them with the opportunity to clear their name.
- The government proposes that any investigations being undertaken by Standards for England transfer, on the appointed day, to the local authority that referred the investigation. It will be for that local authority to arrange for the conclusion of the investigation. The local authority's standards committee will remain established until the last complaint it is considering, referred either internally or from Standards for England, has been dealt with.
- Any cases with which the First-tier Tribunal (Local Government Standards in England) is dealing on the appointed day will be concluded by that tribunal. It will not receive any appeals against standards committee rulings after that date. The right of appeal will not exist for those cases standards committees deal with as they work their way through the transitional system. The government considers that the risk of protracted proceedings justifies this approach. The sanctions available to standards committees are significantly less severe than the sanctions available to the First-tier Tribunal (Local Government Standards in England).
- The government proposes that the suspension sanction is removed from standards committees for the transitional period. Hence the most a standards committee could do, for instance, is to issue a councillor with a censure or a request that they undergo training.

### **THE NOLAN PRINCIPLES**

The **Committee on Standards in Public Life** is an advisory non-departmental public body established in 1994. The Committee's landmark First Report published in 1995 established ***The Seven Principles of Public Life*** often described as the Nolan Principles.

The Seven Principles of Public Life are:-

- **Selflessness** – Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.
- **Integrity** – Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

- **Objectivity** – In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- **Accountability** – Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- **Openness** – Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- **Honesty** – Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership** - Holders of public office should promote and support these principles by leadership and example.

Whilst it is anticipated that the statutory principles will be repealed, they have the potential to continue to be utilised more informally by people looking to develop their understanding of the standards expected of those in public office.

### **FIDUCIARY DUTY OF COUNCILLORS**

A councillor is treated as a trustee of council assets, with a fiduciary duty to apply those assets in the public interest. Where a councillor abuses that trust, for example by disposing of those assets for personal gain, he/she can be held liable for the resulting loss - as with the House of Lords landmark ruling against Dame Shirley Porter in her capacity as Leader of Westminster City Council.

### **REGISTERING INTERESTS**

The Local Government Act 2000 requires each councillor to make a declaration of his or her interests and to ensure that any addition or amendment to that declaration is made within 28 days of any change occurring in relation to his or her interests. The Bill intends to strengthen this by making it a criminal offence for a councillor to fail to register a relevant interest or withdraw for a personal interest, although the scope of this offence awaits Regulations.

### **CIVIL LAW**

As councillors do not enjoy legal privilege they are subject to the same laws of **libel and slander** as the rest of the population. However, a council cannot itself be libelled so this remedy would only be available for the individual claiming they have been libelled or defamed rather than the authority itself.

**Misfeasance in public office** is a cause of action in the civil courts. It is an action against the holder of a public office, alleging in essence that the office-holder has misused or abused his power. There are two types of misfeasance in public office. One, known as 'targeted malice', occurs when a public office holder intentionally abuses his or her position with the motive of inflicting damage upon the claimant. The second is termed 'untargeted malice' and is committed by a public office holder who acts knowing that he/she has no power to undertake the act complained of.



## **EQUALITIES AND DISCRIMINATION LAW**

Other civil law remedies would be available to individuals, but not councils, in the area of **equalities and discrimination law** for unlawful discrimination.

Discrimination law governs the right of individuals not be treated less favourably than others on grounds that include sex, race, religion, sexual orientation, age and disability. It also deals with the duty of public bodies to promote equality although the coalition government have announced that they are to repeal the social-economic duty on council's enacted in the Equalities Act 2010.

Councillors may, of course, be specifically named as a party to proceedings by claimants in discrimination proceedings.

## **CRIMINAL LAW**

A councillor sentenced to a term of imprisonment of not less than 3 months is disqualified from office by virtue of **Section 80 of the Local Government Act 1972**.

A councillor using their position to support or influence a planning application for a project or venture that they have a financial interest in or otherwise using their position for self financial gain would be committing an offence under the **Fraud Act 2006**. Conviction under this Act carries a maximum penalty of 10 years imprisonment or an unlimited fine or both

The **Bribery Act 2010** provides a legal framework to combat bribery in the public (or private) sectors. It replaces the fragmented and complex offences at common law and those previously contained in the Prevention of Corruption Acts 1889-1916

The new Act creates two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage in a public office. Again, the maximum penalty for individuals is 10 years' imprisonment or a fine, or both

The Crown Prosecution Service, rather than councils, would decide whether there was sufficient evidence to prosecute for criminal offences.

## **ELECTORAL OFFENCES**

The relevant legislation relating to electoral offences can be found in the:

- The Representation of the People Act 1983 (the Act)
- The Representation of the People Act 1985
- The Political Parties, Elections and Referendums Act 2000
- The Electoral Administration Act 2006 ("EAA")

There are a number of electoral offences specified in the Representation of the People Act 1983 and 1985, with the key ones being:

**Undue influence:** Where an individual, directly or indirectly, makes use of or threatens to make use of force, violence or restraint; or inflicts or threatens to inflict injury, damage or harm in order to induce or compel any voter to vote or refrain from voting. This offence has been modified by the Electoral Administration Act to extend the effect of it to include intention and not just where an act has taken place. A

person may be guilty of undue influence if they impede or prevent, or intend to impede or prevent, the free exercise of the franchise of an elector.

**Bribery:** Where any individual, directly or indirectly, gives any money to any voter, in order to induce any voter to vote or not to vote for a particular candidate, or to vote or refrain from voting.

**Treating:** Where either before, during or after an election, any person, directly or indirectly, gives or provides (or pays wholly or in part the expense of giving or providing) any food, drink, entertainment or provision in order to influence corruptly any voter to vote or refrain from voting.

**Personation:** Where any individual votes as someone else (whether that other person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or proxy. Further, the individual voting can be deemed guilty of personation if they vote on behalf of a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing the proxy appointment is no longer in force.

**Postal and proxy voting:** Where an individual applies for a postal or proxy vote as some other person, otherwise makes a false statement in connection with an application for a postal or proxy vote, requests an Electoral Registration Officer or a Returning Officer to send a postal vote or associated communication to an address which has not been agreed by the person entitled to vote, or causes a postal or proxy voting communication not to be delivered to the intended recipient.

**False information in nomination papers:** Where a person gives false information in a nomination paper or in their consent to nomination, they are guilty of a corrupt practice.

**False information in relation to registration:** Where an individual, for any purpose in connection with the registration of electors, provides false information to the Electoral Registration Officer in connection with the registration of electors, that person is guilty of offence.

**The Electoral Administration Act 2006** created two new offences which are:

**Supplying false information to the Electoral Registration Officer, and**

**Making fraudulent application for a postal vote**

The majority of electoral offences carry a maximum penalty of 1 or 2 years imprisonment or an unlimited fine.

### **AUDIT COMMISSION FOR LOCAL AUTHORITIES**

Whilst powers of surcharge were abolished under the **Local Government Act 2000** an auditor appointed by the Audit Commission under the **Audit Commission Act 1998** will continue to play their role in investigating financial impropriety in local government and can recover financial losses from individuals councillors on the basis that he or she is responsible for the authority incurring unlawful expenditure. It is yet to be seen whether this power will be transferred to another body given the government's announced abolition of the Audit Commission.

## **LOCAL GOVERNMENT OMBUDSMAN**

The Local Government Ombudsman was set up to investigate maladministration causing injustice. The law does not define maladministration but the Local Government Ombudsman currently defines its' mandate as follows:

*“We can consider complaints about things that have gone wrong in the way a service has been given or the way a decision has been made, if this has caused problems for you”*

Individual or collective actions or failings of councillors may amount to maladministration.

The government has announced that it intends to give the Local Government Ombudsman, the established body for investigating public complaints over the way they have been treated by their council, greater influence. For the first time local authorities will be legally compelled to implement the Ombudsman's findings.

## **BIAS, PREDISPOSITION AND PREDETERMINATION**

This is a complex area of common law (i.e. judge-made law) that has implications for councillors individually and councils. It is wrong, therefore, to associate such matters exclusively as having been caused by Standards for England or as a direct result of the introduction of the standards regime under the Local Government Act 2000.

The long established legal position is that a councillor may not be party to decisions in relation to which he/she either is actually biased (in the sense that he/she has a closed mind and has pre-determined the outcome of the matter to be decided irrespective of the merits of any representations or arguments which may be put to him/her) or gives an appearance of being biased, as judged by a reasonable observer.

A finding of bias and/or predetermination can make a decision unlawful with costs and reputational implications for councils and the First-tier Tribunal (Local Government Standards, England (formerly the Adjudication Panel for England) has held that such a finding could be a breach of Paragraph 5 of the current code of conduct which could lead to the disqualification of a councillor.

The Localism Bill aims to clarify the rules on pre-determination and bias: the Bill provides that an indication by a councillor that he takes a particular view on a matter is not to be taken as evidence of a closed mind. The intention is that the normal activities of a councillor, such as campaigning, talking with constituents, expressing views on local matters and seeking to gain support for those views, should not lead to an unjust accusation of having a closed mind on an issue that can lead to a legal challenge. The government claims that that this will give councillors the assurance that they can campaign, discuss and vote on issues with confidence and so encourage more people to stand in local elections. In practice, the Court of Appeal has already asserted that such activities will not preclude participation in decision-making, unless the councillor is so committed that they are not even prepared to listen to the evidence, but courts may fret that, where a councillor says that he has a closed mind on a matter, the court cannot take this assertion into evidence;

The government previously announced that a power of electoral recall of councillors is also being proposed to allow for the removal of councillors mid term for cases of 'serious misconduct'; although this has also not been included in the Localism Bill.

## **MISCELLANEOUS**

It will remain open to councils to agree local arrangements whereby councillors could be censured for breaching local codes of conduct and other local protocols; including other activity regarded as inappropriate and to remove councillors from committees, outside bodies and other appointments, when appropriate. Whilst there will be a need for local authorities to reflect constitutional changes as a result of abolition of the current standards regime, other local protocols covering, for example, member/officer relations and guidelines regarding use of council resources, will continue to have effect and be subject to any local sanctions adopted by individual councils, though there will be no statutory sanctions against an offending member and therefore no powers to suspend or disqualify councillors.

## **FURTHER CONTACT**

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