

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer and
Chief Planning (Control) Officer

REPORT NUMBER: **G234**

TO: **STANDARDS COMMITTEE and
DEVELOPMENT COMMITTEE**

DATE OF MEETING: 26 March 2008
2 April 2008

REVIEW OF THE PLANNING PROTOCOL

1. **PURPOSE OF REPORT**

- 1.1 To conduct a review of the Planning Protocol to ensure that it secures best practice in the efficient discharge of the Council's planning function whilst promoting the highest ethical standards.

2. **RECOMMENDATION TO COUNCIL**

That the revisions to the Planning Protocol shown at Appendix 1 be adopted with immediate effect.

The Committees are asked to make a recommendation to Council on this matter.

3. **FINANCIAL IMPLICATIONS**

- 3.1 There are no financial implications arising from this report.

4. **RISK MANAGEMENT**

- 4.1 This report is most closely linked with the Council's Significant Business Risk No. 4 (Governance). Key risks are set out below:

Risk Description	Likelihood	Seriousness Impact	or	Mitigation Measures
The Standards Committee fails to undertake an ethical audit of Council protocols.	Low	Marginal		Monitor of protocols on a regular cycle
Planning decisions are delayed by site inspections and referrals to Committee	High	Critical		Establishing guidance for the circumstances in which it is appropriate for site inspections and referrals to occur.

5. **KEY INFORMATION**

- 5.1 The Planning Protocol, in its current format, was adopted by the Council on 14 October 2003 and reviewed by the Standards Committee on 24 September 2004. The Protocol now falls due for ethical audit by the Standards Committee.
- 5.2 The Planning Protocol applies to Members and Officers and seeks to provide guidance and establish best practice in the way that planning applications are considered in the interests of securing high ethical standards. The Protocol does not form part of the Code of Conduct although it does set down general standards that may be considered by the Standards Committee in the event of a complaint. There are also some overlaps with the Code; for example, a breach of the Protocol may give rise to a member bringing his office or the Council into disrepute itself or using their position to secure an advantage to any person.
- 5.3 Aside from promoting high ethical standards, the Protocol aims to assist the timely and efficient progression of planning applications. In this regard, it has become apparent that applications can be delayed by the late, and possibly unnecessary, calling of site inspections. Not only may this impact upon the Council's fulfilment of time targets for determination of applications, but also cause inconvenience and incurrence of cost for individuals expecting an application to be considered by Development Committee on a particular day.
- 5.4 It is therefore recommended that the Planning Office be notified of requests for site inspections within 21 days of registration of a planning application so that Development Committee may decide at the earliest opportunity whether a site inspection is appropriate and to minimise inconvenience to interested parties. It is also recommended that site inspections should be called for planning reasons only and that these reasons be cited at the time of the request.
- 5.5 Likewise, the procedure for referrals to Development Committee can cause delay and additional cost to individuals. Any member may require a planning application that would otherwise be determined by the Chief Planning (Control) Officer under delegated powers to be referred to the Committee. While the Scheme of Delegation does not require Members to provide a reason for a referral, it is suggested that as a matter of good practice the Protocol be amended to require that all referrals to Committee are made on planning grounds only. Further, that the request is made within 21 days of the date of the application being registered.
- 5.6 Irrespective as to whether a Member wishes to request a site inspection or require an application to be referred to Development Committee, the amended Protocol would require them to initially make contact with the Development Control Manager or the Case Officer to discuss their concerns.
- 5.7 Of course, there may be instances where there is legitimate reason why a site inspection or referral to Committee has not been made within 21 days. Amendment of the Protocol to stipulate a timescale would not preclude a request outside such timescale, but would set down the general expectation.
- 5.8 It is suggested that a Member who would be regarded as having a prejudicial interest in an application if it were brought before Committee, should not request a site inspection or

make a referral to Committee. This affords compatibility with the Code of Conduct and protects the member from complaint that they are using their position as a member to secure an advantage or disadvantage to any person.

- 5.9 An issue that has become apparent from application of the Protocol is that the provision under paragraph 5.1 that any planning application by Members, staff or their close family or friends must be referred to Development Committee may in fact provide an advantage to such person. In particular, an application that would have been refused under the scheme of delegation would instead automatically go before Development Committee. The applicant would then have opportunity to convince members that their proposal be approved. This would not be an opportunity afforded to a member of the public (unless a member refers it to Committee) and may be seen as an unfair advantage to members, officers and their close family and friends. It is therefore recommended that the Chief Planning (Control) Officer only refer applications involving the specified category of person where the application is recommended for approval.
- 5.10 The issue of site inspections has raised queries as to what should happen whilst on site and who is permitted to attend. There is a separate site inspection protocol which has been set out at paragraph 13.6 of the Protocol (in updated form) to avoid confusion and inconsistency in having two documents. The updates seek to provide clarity that site inspections are not public meetings at which members of the public are entitled to attend and make representations.

6. **APPENDICES**

Appendix 1 – Updated Planning Protocol

7. **BACKGROUND PAPERS REFERRED TO:**

None

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BABERGH DISTRICT COUNCIL
PLANNING PROTOCOL

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1 INTRODUCTION

- 1.1 The role of the Council (including its Members and Officers), as the local planning authority, is one of its most high profile roles. Whilst the Council endeavours to ensure that all planning matters are dealt with properly in accordance with the law, it recognises that the public's perception of how the system operates is important in maintaining and promoting public confidence in the integrity and impartiality of the planning system. With these points in mind, the Council has adopted this Protocol, which sets out guidelines for its Officers and Members. The Protocol applies to all Members, although inevitably some provisions will only apply to Members who are appointed onto the Development Committee and thus involved in the determination of planning applications.
- 1.2 Officers are affected by specific codes or Professional Practice Rules issued by their own professional bodies such as the Royal Town Planning Institute. Members are subject to the Council's Code of Conduct, which sets out the more general principles of good conduct, which are required of Members. It should be noted that breaches of the Protocol not only potentially open the Council's planning decisions to challenge in the courts, but also may amount to a breach of the Code of Conduct by individual Members, which in turn may lead to sanctions ranging from public censure to disqualification.

- 1.3 This Protocol is not intended to replace or contradict anything in those documents. Instead, it is intended to supplement and provide additional guidance specifically relating to the planning functions of the Council.

2 **THE GENERAL ROLE OF MEMBERS AND OFFICERS**

- 2.1 Members and Officers have different roles to perform within the planning system, but their roles are complementary. A successful relationship between Members and Officers can only be based upon mutual trust and understanding of each other's positions.
- 2.2 Officers are responsible to the Council as a whole. Instructions to them may only be given through a Council or Committee decision. Their role within the planning process is to provide impartial and professional advice. They must provide the Council and Committees with all information necessary to enable the Members to make the most appropriate decision. In making recommendations to the Development Committee it is essential that they give clear recommendations, based upon relevant planning considerations.
- 2.3 Members are entitled to expect that their Committee and Council decisions, for which they are statutorily responsible and accountable, are acted upon and implemented by Officers. Consequently, Officers will conscientiously carry out policies and resolutions acting at all times with competence, loyalty and integrity.
- 2.4 In the context of their role, Members must act fairly and openly. Although some Members may have been elected to pursue a particular stance with regards to development, this does not absolve them from ensuring that they make decisions taking into account all relevant considerations. They must approach each application with an open mind whilst carefully weighing up all relevant issues. Members must determine each application on its own merits and ensure that the reasons for their decisions are clearly stated.
- 2.5 Planning issues, and in particular, development proposals often raise concern locally. As such, there is a need for Members to have direct contact with the Case Officers, to obtain the factual information quickly. To facilitate effective communication, the following guidelines exist:
- 2.6 Contact with the Case Officer should be limited to requests for factual information with regard to development proposals. Advice may also be sought as to the progress of the application and the nature of consultation responses received;
- Whilst Members are encouraged to discuss their concern with the Case Officer, no pressure should be put on that Officer to make a particular recommendation;

- If Members have concerns as to the information received or advice given by the Case Officer, then the matter should be discussed in the first instance with the Head of Natural and Built Environment and, if unresolved, then the Corporate Director responsible for Planning.

3 **TRAINING**

- 3.1 It is recognised that planning is a complex area and that Members need to have a good understanding of planning policies, practice and law, to help them determine applications referred to the Development Committee and to assist members of the public with their responsibilities.
- 3.2 In 1995, the Nolan Committee undertook a review of the standards of conduct in public life. It recommended that Members should receive adequate training to assist them in the performance of their planning duties. Consequently, the Head of Corporate Services in conjunction with the Head of Natural and Built Environment will seek to ensure that training is available and that all Members receive a proper grounding in the area of planning law, practice and policy and that update seminars/training are offered. The Council will expect all Members who will make planning judgements to undertake relevant training.

4 **INTERESTS**

- 4.1 It is a fundamental principle that decisions should not be made by those who have a significant interest in the outcome. The Council is committed to the adherence of this principle in order to avoid public confidence in the planning system being eroded.
- 4.2 In accordance with the Council's Code of Conduct, all Members must ensure that they comply with the rules regarding declarations of interests set out in the Code of Conduct. Similarly, Officers are required to comply with the statutory restrictions regarding interests set out in section 117 Local Government Act 1972 and also the terms and conditions of their employment.
- 4.3 Members who have private interests relevant to the work of the Development Committee, particularly those interests that would amount to prejudicial interests under the Council's Code of Conduct, should avoid serving on the Development Committee.

5 **DEVELOPMENT BY MEMBERS, OFFICERS AND THE COUNCIL**

- 5.1 It is legitimate for development proposals or representations to be submitted by the above groups or by their close friends or family (where relevant). However, it is vital to ensure that they are handled in a way that does not give any grounds for accusations of favouritism or suspicions of impropriety. Regard should be given to the following:

- Such proposals or representations should be identified, and the Monitoring Officer informed in writing by the person submitting the application, or by the Head of Natural and Built Environment when the application is registered;
 - Serving Members or Officers who pursue or make representations on a planning matter must not take part in the decision making process regarding that proposal;
 - Relevant Members will need to ensure, for example, that they comply with the Code of Conduct;
 - Officers will need to take account of their professional body's standards and the statutory requirements about declaring interests;
 - The Head of Natural and Built Environment will ensure that all planning applications made by Members or Officers (including their close family and friends) that are recommended for approval are referred to Committee for determination and not dealt with under delegated powers;
 - In the report to Committee, the fact that the application is from a Member or Officer should be highlighted. As part of the report the Monitoring Officer should confirm whether the application has been processed normally;
 - In cases where Members or Officers submit representations in respect to other planning applications, the matter should be referred to the Monitoring Officer to determine whether the application should be referred to Committee or dealt with using delegated powers. The Monitoring Officer should note the case file to record the determination and the reasons in arriving at the determination.
- 5.2 Proposals for the Council's own development (or a development involving the Council and another party) should be treated in the same way as those by private developers and in accordance with guidance given in Circular 19/92 (as may be amended or replaced from time to time). A Committee Report should clearly note that the application is made by the Council or if the Council is landowner.
- 5.3 The above Circular outlines that the same administrative process, including consultation, should be carried out in relation to the Council's own planning applications, and that they should be determined against the same policy background (i.e. the Development Plan and any other material planning considerations).
- 5.4 Decisions must be made strictly on planning merits and without regard to any financial or other gain that may accrue to the Council if the development is

permitted. It is important that the Council is seen to be treating such applications on an equal footing with all other applications as well as actually doing so.

- 5.5 The above considerations also apply to private applications in respect of Council owned land (e.g. prior to a land sale being agreed or negotiated).

6 LOBBYING OF AND BY MEMBERS

- 6.1 Whilst it is recognised that Members will inevitably be approached by persons interested in a particular application to discuss the matter, Members should declare at the Development Committee if they have had any significant contact with persons who may have an interest in the particular application (e.g. applicants and objectors).
- 6.2 Members of the Development Committee should not indicate their likely decision on an application until they have had the opportunity of hearing all relevant evidence and arguments at the formal planning meeting. (See also paragraph 7.6 below).
- 6.3 Individual Members should consider the need for a Planning Officer to accompany them at meetings particularly where those relate to applications, which will potentially be controversial.
- 6.4 It is recommended that Officers and Members should ensure that a note is kept of all contentious meetings they attend with persons who have a particular interest in an application. Such notes will help avoid any future misunderstanding as to what may have been said at such meetings and will be available for other members of the public to see when inspecting the planning file.
- 6.5 In recognising the need for Officers to apply their own professional judgement in evaluating the merits or otherwise of an application, Members must not lobby Officers who are dealing with the application. They should not criticise an Officer for coming to a different conclusion based upon his or her own professional judgement.
- 6.6 Any concerns a Councillor may have about the view expressed by an Officer should be dealt with in accordance with the guidelines referred to in paragraph 2.5 above before the Development Committee considers the application.

7 PRE AND POST APPLICATION DISCUSSIONS

- 7.1 It is recognised that discussions between, for example, a potential applicant and a Councillor, prior to the submission of an application can be of considerable benefit to both parties. Indeed, the Audit Commission, Local Government Association, and National Planning Forum encourage pre-application discussions.

7.2 However, the disadvantage of such discussions is that it is easy for such discussions to become, or to be seen (especially by objectors) to become, part of a lobbying process.

7.3 With a view to protecting the integrity of the planning system, it is recommended that Members and Officers remember the guidelines in 7.4 and 7.5 if they become involved in pre or post applications discussions.

7.4 It should be emphasised to persons involved in such discussions, by the Councillor / Officer that:

- Discussions will not bind the Council (or other decision maker) to making a particular decision;
- Any views expressed are personal and provisional;
- There is a need to appreciate that not all relevant information will be to hand at such meetings;
- All Officers taking part in such discussions on delegated matters should make clear whether or not they are the decision maker.

7.5 In addition, Members and Officers should take note of the following:

- To avoid any possible misunderstanding as to what may have been said, a follow up letter is advisable to summarise the matters discussed at the meeting. In any event, a written note should be made of all potentially contentious meetings or potentially contentious telephone discussions;
- Care must be taken to ensure that advice is not partial;
- Particularly where the application is likely to be controversial, an Officer should attend meetings with Members;
- Any advice given at discussions should be consistent and based upon the Development Plan and material considerations.

7.6 Some of these guidelines are also relevant to Members who may be involved in the consultation process affecting a particular application (e.g. in their capacity as a parish or town councillor). Members who find themselves in such a position, should either refrain from taking part in the consultation process or make it clear that any view they express at the consultation stage is based upon information available to them at that time . Further, that they may change their view upon reconsideration of the matter at district council level having taken into account any additional relevant information.

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8 **PLANNING ENFORCEMENT**

- 8.1 In assessing the need for enforcement action, Members should bear in mind that it is not an offence to carry out development without first obtaining planning permission. Whilst this is clearly unsatisfactory, there are occasions, particularly in the case of householder development, where works have been undertaken under the impression that they are “permitted development”. Before initiating formal action therefore, there is always a need to understand the background to any case and to provide the opportunity for the owner or occupier to remedy any breaches voluntarily.
- 8.2 The Enforcement Concordat also requires the Council to provide businesses with the opportunity to resolve any breaches of planning control without recourse to legal action.
- 8.3 Any enforcement investigation has the potential to become a criminal matter. As such, any action taken during the course of investigations must comply with the relevant legislation or the Council could be prevented from prosecuting the case by default.
- 8.4 In order to protect the Council’s position when dealing with enforcement matters, Members are strongly advised to:
- Ensure that at no time does any action on their part prejudice the Council’s position;
 - Restrict any enquiries relating to specific issues to matters of fact or general progress of the case;
 - Acknowledge that enforcement cases are dealt with in accordance with the Council’s adopted enforcement policy.
- 8.4 The role of the Enforcement Officer (Principal Development Control Officer) is to establish the facts and ascertain whether any matter brought to his/her attention is actionable under planning legislation. The action taken is determined either by Committee or by the relevant Head of Service (i.e. Head of Natural and Built Environment or Head of Corporate Services) using his/her delegated powers.
- 8.5 If Members are unhappy as to the way a case is progressing, the matter should be discussed with the Head of Natural and Built Environment or the Head of Corporate Services, as appropriate, in the first instance and, if unresolved, then the Director responsible for Planning.

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9 AGENDAS

9.1 In the first instance the Head of Natural and Built Environment will decide the content of planning agendas in consultation with the Head of Corporate Services. Should there be any dispute the final decision will rest with the Chief Executive in consultation with the Chairman, Head of Natural and Built Environment and Head of Corporate Services.

9.2 The Council's delegation scheme allows Members to require applications for development to be determined by Committee. This should not be exercised in instances where the Member has an interest, as defined in the Code of Conduct, in the application. In order to ensure that the determination of applications is not unnecessarily delayed, Members should:

- in the first instance discuss their concerns with the Case Officer
- if after having discussed their concerns with the Case Officer the Member still wishes to refer the application to Committee the Member should in making the referral provide clear planning reasons for referring the matter to Committee,
- make the referral within 21 days of registration of the application.

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9.3 Additionally if Members have concerns regarding other planning matters they can request the Head of Natural and Built Environment to produce a report for the Development Committee. The precise content of reports, however, is not a matter for Members.

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10 OFFICERS' REPORTS TO COMMITTEE

10.1 The way planning applications are reported to Committee is very important. If applications are not reported properly, there may be public concern and a loss of confidence that the application will be fairly determined. This in turn attracts claims of maladministration and / or judicial review.

10.2 Consequently, it is essential that Officers ensure that:

- Reports to Committee are accurate and comprehensive;
- Reports include reference to the policies of the Development Plan, planning history and other important planning considerations which are material to the application;
- Other than in exceptional circumstances (the reasons for which will be clearly given), the reports include a clear officer recommendation;

- Reports include a technical appraisal to justify the recommendation;
- If the Officer recommendation is contrary to the Development Plan, then the material considerations which justify this must be clearly explained;
- Reports set out the nature of planning consultation responses, including objections to the proposal and all material planning considerations raised by third parties and that these are properly addressed in the reports.

11 **PUBLIC SPEAKING**

- 11.1 Guidance on the entitlement to speak at the Development Committee is set out in a leaflet available from the Development Control Section

12 **THE DECISION MAKING PROCESS AND DECISIONS CONTRARY TO OFFICER RECOMMENDATION AND / OR THE DEVELOPMENT PLAN**

- 12.1 When determining planning applications, Members must bear in mind that legislation requires that planning decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. If it is proposed to make a decision, which is at odds with the Development Plan (a “departure application”), the application must be handled very carefully to ensure that the Council does not undermine the proper implementation of the Development Plan for the area.
- 12.2 If Officers propose to recommend an application for approval, which is contrary to the Development Plan, full justification must be given in the Committee report.
- 12.3 Although it is important that the reasons for a Committee decision are clear at all times, it is essential that the reasons for approving a departure application, are clearly minuted.
- 12.4 If a resolution is passed which is contrary to a recommendation of the Head of Natural and Built Environment (whether for approval or refusal) a detailed minute of the Committee’s reasons, and whether or not such reasons can be supported by planning evidence, will be made and a copy placed on the application file.

13 **SITE INSPECTIONS**

- 13.1 It is important that site inspections to view planning application sites are not held without being justified. A site inspection should only be considered necessary where for example:

- The building and or site needs to be seen in context, as plans or photographs are not sufficient to properly assess the impact of the development; or

- The proposal raises particularly unusual factors, for example it would have a major environmental impact or could lead to loss of jobs and/or financial hardship (e.g. enforcement against an existing use or development that has already been carried out); or
 - There is considerable local concern about a proposal, allied to planning reasons for carrying out a visit (e.g. the physical relationship of the site to other sites in the neighbourhood).
- 13.2 Members proposing site inspections should specify reasons for doing so and these should be minuted. The request should be made at the earliest opportunity and within 21 days of the date of registration of the application to avoid unnecessary delay in the determination of the planning application.
- 13.3 Where a site inspection is requested by a member at Development Committee in respect of an application on the agenda, the request (unless withdrawn) should be considered by the Committee before progressing to the next item of business. If however there are no members of the public in attendance for that item the Chairman may at his discretion defer consideration of the request until the application falls to be considered on the agenda. A proper consideration of the request may involve the provision of details by the Case Officer, but should not extend to the public speaking session
- 13.3 Site inspections are conducted for the purpose of enabling Members of the Development Committee to undertake a visual assessment of the site to assist with decision-making. Site inspections are not public meetings and all Members should be aware of the need to avoid discussion with members of the public and applicants present at or in the vicinity of the site.
- 13.4 It is essential that Members and Officers ensure that those attending are not led to believe that a decision has been taken on the inspection, or that conclusive views have been reached.
- 13.5 The Head of Corporate Services will ensure that all correspondence in relation to site inspections clearly identifies the purpose of the site inspection and the format and conduct of the inspection.
- 13.6 The arrangements which will apply at the site inspections are:
- The Chairman (or Vice-Chairman) of the Development Committee will formally 'open' the site inspection and conduct all other proceedings during that site inspection.
 - The Chairman (or Vice-Chairman) will ask the Planning Officer to give a brief, factual, introduction to the application under consideration, concentrating on

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the issue(s) giving rise to the need for a site inspection and pointing out relevant features to assist Members in their understanding of the issues.

- The Chairman (or Vice-Chairman) will then afford each Member attending the site inspection the opportunity to ask any relevant questions. No discussion on the merits of the application will take place.
- The Chairman (or Vice-Chairman) will then ask the Parish Council representative (if in attendance) whether he or she has any relevant factual local information about the application of which Members should be made aware.
- Normally, it will be unnecessary for anyone else present at the site inspection to ask questions or contribute to the inspection in any other way. Verbal representations are facilitated through the public speaking session at the Committee meeting itself and no verbal representations from any interested person will be heard at the site inspection.
- The site inspection will then be formally closed by the Chairman (or Vice-Chairman).

13.7 Ward representatives who wish to attend site inspections in their Wards should first seek the permission of the Chairman of the Committee.

14 **REVIEW OF DECISIONS**

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- 14.1 Every two years arrangements will be made for Members to visit a sample of implemented planning permissions throughout the District in order that the quality of decisions can be assessed.
- 14.2 The outcome of this review will be formally considered by the Development Committee and any amendments to existing policy or practice will be identified. The review should include examples from a broad range of categories, such as, major and minor development, permitted departures, upheld appeals, listed building works and enforcement cases.

15 **COMPLAINTS AND RECORD KEEPING**

- 15.1 The Council's complaints system applies to all planning related complaints.
- 15.2 In order that any complaints can be fully investigated, it is important that every planning application file contains a full and accurate account of events throughout its life, particularly the outcomes of meetings or significant telephone conversations.
- 15.3 The same principles of good record keeping will be observed in relation to all planning enforcement and Development Plan matters. The relevant Heads of Service will undertake the monitoring of record keeping on a continuous basis.

16 **CONFIDENTIALITY**

- 16.1 Officers and Members will whenever appropriate deal with planning matters in open business. Where it is necessary to report in confidential business full reasons will be given and all persons involved in the decision making process will be expected to respect the confidentiality.

Adopted by Council 14.10.2003

Minor amendments / additions by Standards Committee 24.09.2004

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