

STANDARDS COMMITTEE

—Minutes—

12 JANUARY 2004

Present:

Mr.Christopher Troke (Chair)
Mr.Steven Moussavi
Ms.Rafela Fitzhugh
Councillor Colin Aherne
Councillor Chris Allen
Councillor Nicholas Botterill

| ITEM | | ACTION BY |
|--------|--|--|
| Item 1 | <u>APOLOGIES FOR ABSENCE</u> None. | PAD/JPC to note |
| Item 2 | <u>MINUTES – 29 OCTOBER 2003</u> <u>RESOLVED:</u> That the Minutes of the meeting held on 29 October 2003 be confirmed and signed as an accurate record. | PAD/JPC to note |
| Item 3 | <u>DECLARATIONS OF INTEREST</u> Councillor Aherne declared a personal and prejudicial interest in a late urgent report taken at the meeting – <i>Application for Grant of Dispensation: Administration members of the Planning Applications Committee</i> – as a member of that Committee and colleague of the Councillor submitting the planning application. Councillor Aherne did not speak or vote, and left the meeting during discussion of this item. Councillor Allen submitted a statement, a copy of which is appended to these minutes at <u>Appendix 1</u> . | PAD/JPC to note for minutes. PAD/PS to note for Members' Register |
| Item 4 | <u>ADJUDICATION PANEL FOR ENGLAND APPEAL FORM</u> The Committee received a report on the pro-forma appeal form devised by the Adjudication Panel for England for use by members wishing to appeal against Standards Committee determinations. | PAC/JPC to note & log form |

Members noted that the form was a request for permission to appeal, the grant of which lay at the sole discretion of the President of the Tribunal, based on the merits of the individual case.

Members queried whether the decision of the President of the Tribunal to refuse to allow an appeal could be challenged, as this appeared to be an infringement of their inherent appeal rights.

The Chair agreed to contact the Adjudication Panel to find out whether any caselaw on the matter existed, and where requests to appeal had previously been turned down, the grounds / reasons for doing so.

Chair (Mr. Troke)
to contact
Adjudication
Panel.

RESOLVED:

That the report and pro-forma appeal form be noted.

Item 5

s.66 DETERMINATIONS - FORMS AND PROCEDURES

The Committee received a Power Point presentation from the Head of Legal Services setting out a draft local procedure the Committee was likely to follow if and when a referral from an Ethical Standards Officer was received for determination .

The following points were raised by Members during discussion on the presentation:

a) Although the Standards Board had advised local Standards Committees not to re-open the ESO investigation, it seemed to members that the hearing would have to be *de novo*, otherwise the Standards Committee would not be in a proper position to make a judgement if it had not heard for itself all the facts and evidence appertaining to the allegation made.

PAD/MO (HP) &
HLS (MC) to note

b) Regarding representation at hearings, it appeared that a member was permitted to be accompanied by a "Mackenzie's Friend", but that person could not also represent the member at the hearing, except by prior consent of the Standards Committee. This appeared to Members to give them less rights of representation at hearings than was accorded to the Council's own employees at lesser quasi-judicial tribunals. Members suggested that the words " ... *which shall not unreasonably be refused* " ... be added to the text of slide 7 to clarify the matter.

PAD/HLS (MC) &
JPC to note

c) Members asked what sort of personal circumstances would make a hearing exempt under the Access to Information Rules? The Head of Legal Services clarified that the Determination Regulations and Article 6 of the ECHR generally provided for the hearings to be held in public, except in very strictly limited

circumstances, such as when personal medical information was being disclosed.

Members queried, if a hearing was heard part-exempt, whether the published decision letter setting out the Committee's findings and reasons would then also have to be partly exempt, as it would seem anomalous not to do so, however confusing that might be to the public. Members also queried whether the decision of the Standards Committee should be made public at this early stage, if an appeal (which might be successful) by a respondent member was lodged against it?

d) Members also queried whether paras.16 -19 of the draft procedure was strictly necessary. Members' preferred procedure was to have both parties submit their evidence (followed by questioning and cross-examination), then summing up of each case (with no new evidence being permitted and the respondent member having the last word), followed by the decision-making on the case (when all parties were asked to leave).

PAD/HLS (MC) &
JPC to note

It was the view of Members that the decision, and any sanction to apply if a breach of the Code was found, should be made together at the same time rather than separately as in the draft procedure. It was also the view of the Committee that hearings should not be held at night, and that although a brief oral decision should be announced on the day, the full written decision (with reasons) should be available 10 working days after the hearing (rather than within 3 working days as stated in the draft procedure).

PAD/HLS (MC) &
JPC to note

RESOLVED

That a revised procedure incorporating Members' preferred methodology for hearing cases and textual changes be drafted and circulated for comment to all Committee members in time for the next meeting.

PAD/HLS (MC) &
JPC to note &
action.

Item 6

LATE URGENT ITEM: APPLICATION FOR GRANT OF DISPENSATION - ADMINISTRATION MEMBERS OF PLANNING APPLICATIONS COMMITTEE.

Reason for Urgency

The Committee was asked to consider this item as an urgent late item as the matter the subject of the dispensation request was due to be considered at the Planning Applications Committee meeting due to be held on 27 January 2004. The next ordinary meeting of the Standards Committee was not scheduled to be held until 19 April 2004, and a decision on the dispensation request was required before that date.

PAD/HLS (MC) &
JPC to note &
action.

Noted a Declaration of Personal and Prejudicial Interest by Councillor Aherne as an Administration member of the Planning Applications Committee making the dispensation request, and as a friend and colleague of the Councillor making the planning application. Councillor Aherne left the meeting, and did not speak or vote on the item.

PAD/PS to note
for Members'
Register

Noted a statement submitted by Councillor Allen (attached as **Appendix 1** to these minutes) in relation to this matter. Councillor Allen remained at the meeting, and spoke and voted on the item.

PAD/JPC to note
for minutes

The Committee received a report on a request for the grant of a dispensation to all Administration members of the Planning Applications Committee, which was due to consider a planning application submitted by a fellow Administration Councillor at its meeting on 27 January 2004.

The Administration members on the Planning Applications Committee had all declared a personal and prejudicial interest on the item, which meant that over 50% of those members entitled and required to participate in the Planning Applications Committee were effectively prohibited from doing so, leaving insufficient members to form a quorum, and thus rendering the Committee incapable of fulfilling its statutory function in determining this particular planning application.

The Monitoring Officer clarified that the matter was only being brought to Committee as it involved a Councillor application – in normal circumstances, minor applications would be dealt with under delegated powers by planning officers – but it was necessary for officers to be seen not to be exercising any bias or favour.

Councillor Botterill stated that he did not feel it appropriate that the business of the Planning Applications Committee in carrying out its statutory function should be rendered impossible in this manner, and the Administration should give serious consideration to his earlier proposal of lowering the quorum to 4, which would permit business to be transacted without the need to constantly seek dispensations.

The recommendation to the report was put to the vote:

FOR – 3
AGAINST – 1
ABSTENTIONS – 1

The recommendation was declared **CARRIED.**

RESOLVED

1. That the Standards Committee agrees the grant of dispensations to Councillors Aherne, Cartwright, Harcourt, Khaled, Powell and Treloggan in order to enable them to participate and vote in the Planning Applications Committee, scheduled to be held on 27 January 2004.

PAD/HLS & PS
to note for
Register

PAD/RL to note
for PAC

2. That the Head of Legal Services reissue to all members of the Planning Applications Committee the Standards Board for England's advice and guidance on the definition of "friend".

HLS (MC) to
issue
appropriate
guidance to PAC
members

Item 7 **ANY OTHER BUSINESS**

None

Meeting began 7:00pm
Meeting Ended: 9.15pm

CHAIR

jpc/10/02/04