

CYNGOR SIR POWYS COUNTY COUNCIL.

Standards Committee
23rd June 2011

REPORT BY: Strategic Director – Law and Governance

SUBJECT: Matters appertaining to Standards Issues

REPORT FOR: Decision, Information and Discussion

A. General Training for Members

A1. Training of County Council Members – Member Development Strategy/Programme

A1.1 Copies of notes of the last meeting of the Member Development Working Group held on the 8th April 2011 are attached to this report as **Appendix 1** for information.

B. Referral of Councillors to Public Services Ombudsman

B1. County Councillor Referrals

B1.1 The Ombudsman has advised that he has received a Code of Conduct complaint against one Member of Powys County Council (ref 3/11CC).

No decision has been received on the complaint to the Ombudsman reported to the April Committee (ref 1/11CC).

C. Other Standards Issues

C1.1 Use of laptops and electronic media during Council meetings

This will be included in the work on revisions to the Constitution now the proposed Local Government (Wales) Measure has come into force.

C1.2 Social Networking

The Member Development Working Group has considered an initial draft of this Protocol. There is a need to ensure that guidance to officers and members is uniform and therefore a joint protocol is being developed.

D. Minutes of Meetings

D1. Meeting of Chairs and Vice Chairs of Scrutiny, Audit and Standards Committees

Notes of the meetings held on the 14th April 2011 and 10th June 2011 are attached as **Appendix 2**.

E Dispensations

E1. Applications - County Councillors

E1.1 No applications for dispensation have been received.

F. Raising the profile of the Standards Committee/Sub-Committee

F1. Standards in Local Government

The Standards in Powys is now ready for publication on the Powys County Council website.

G Renewable Energy Issues (Electricity Sub Station, Pylons, Overhead Power Lines, Wind Farms etc)

G1 Introduction

- 1.1 At the last meeting on 27th April the Committee discussed at length issues concerning proposals for a large electricity sub-station (hub), pylons and associated overhead power lines in north Powys.
- 1.2 The minutes of that meeting (which are included in the papers for this meeting) contain a relatively extensive account of the matters considered and the decisions arrived at and accordingly are not repeated in the body of this report.
- 1.3 Details of the debate and decisions arrived at by the Standards Committee at the last meeting were conveyed to County Councillors under cover of a letter agreed with the Chair and sent out on Friday 20th May. A copy of that letter is attached as **Appendix 3**.
- 1.4 This was accompanied by a second letter to County Councillors requesting them to complete a form indicating whether they had any interests in the matter as defined in the Members Code of Conduct so as to better inform the Standards Committee when they next consider the matter. A copy of that letter and the form are attached as **Appendix 4**.
- 1.5 At the last meeting the Committee agreed to review the position in the light of the information gained from Members completing these forms. So that the Committee is given the most up to date information in this connection a paper showing an analysis of the latest responses will be circulated at the meeting.
- 1.6 The remaining sections of this report on this topic have been prepared to aide the Committee's review of matters.

G2 Additional Related Issues

- 2.1 Naturally the Standards Committee meeting on 27th April focussed on the issues around the proposed electricity sub-station (hub), pylons and overhead power lines as these developments were the topics figuring prominently (and indeed continue to do so) on the agenda of the Council and the local communities at that time.

- 2.2 Since the last meeting however it has emerged that there are related issues that are coming to the fore and which need to be factored into the consideration of this matter. The Chair and Vice Chair have been made aware of developments, which roughly fall into three broad categories, and these are touched upon in the following paragraphs.

G3 Wind farm Applications

- 3.1 Firstly, there are a significant number of wind farm applications in north Powys already in the pipeline but which have not been progressed towards determination in recent times for a number of reasons. It now seems likely that this process may accelerate.
- 3.2 Some of these wind farm applications fall to be determined by the Council's own Planning Committee, others externally by the IPC or DECC with the Council having a consultee role. A briefing paper prepared by planning officers for Members explaining the position of the consenting regimes for these applications is attached as **Appendix 5**.

G4 Policy Issues (Including TAN 8)

- 4.1 Secondly, given the enormous interest in these renewable energy issues the Local Authority and its' Members will inevitably become involved in the underlying policy issues including TAN 8 produced by WAG and, of course, the Council's own policies and procedures e.g. the Local Development Plan and the Council's Planning Protocol.
- 4.2 In terms of TAN 8 a motion has already been submitted for consideration at the next County Council meeting on the afternoon of Wednesday 29th June. A copy of the motion is attached as **Appendix 6** .

G5 Impact on Road Network

- 5.1 Thirdly, concern is now being expressed over the pressure and impact which all these developments will bring to the County's road networks both in the area of North Powys and possibility wider afield. It is understood that this impact on the transport infrastructure could continue for a number of years.
- 5.2 This potentially could mean that communities far removed from the developments themselves could be affected and hence result in the Councillors for those areas having interests under the Members' Code of Conduct and possibly other issues arising from bias/pre-determination etc.

G6 Update on Activities since Last Meeting

- 6.1 Since the last meeting a number of meetings have taken place between relevant Members and Officers. Following these meetings the other Authorities in Wales were emailed to ascertain whether they had experience of similar issues, whether they had issued dispensations in these types of cases and whether they had adopted a bespoke Planning Protocol. The committee will be updated at the meeting on the responses received.

- 6.2 It has also been decided to obtain the advice of Counsel on the matter particularly around the difficult subject of bias/predetermination which, although strictly speaking, is outside of the scope of the Standards Committee's remit is so inexorably wound up in this issue (as also is the Council's bespoke Planning Protocol) it would not be sensible to simply separate it off and ignore it in the context of the wider picture.
- 6.3 Additionally, Members of the Planning Committee have been briefed on the matter and the Montgomeryshire Committee have received an update.
- 6.4 One Member of the Planning Committee having sought advice has notified the Monitoring Officer of the intention to play the role of Local Member given the need to represent that Member's constituents in the plainest terms.
- 6.5 Furthermore, a number of communications have been received from members of the public referring to conferences and like events taking place on the subject of renewable energy; requesting information as to whether any County Councillors had, or were, attending such events and expressing a view that if County Councillors did attend they would be in breach of the Code of Conduct and would be referred to the Ombudsman.

G7 Issues going Forward

7.1 The foregoing gives a broad outline of the background and developments that have occurred since the last Meeting of the Committee on the 27th April. In the light of this it is suggested that the Committee now needs to consider and come to appropriate determinations/having regard to the following issues and matters:-

- The debate by the County Council on the 29th June relating to TAN 8;
- The extension of the grant of dispensations to County Councillors who are not decision makers to include the additional matters referred to above, including the wind farm applications, the transport infrastructure issues and policy discussions;
- Whether the decision of the Committee at the last Meeting not to grant dispensations to County Councillors who are decision makers needs to be revised and if it is decided to grant dispensations to have regard to the following :-
 - (a) The uncertainty as to which Members will be decision makers at relevant times in the future. This point not only applies in the context of a change to the membership of the Cabinet and/or Planning Committee but also the possibility (however remote) of the full County Council or a Scrutiny Committee making a decision in this connection at some point in the future.
 - (b) The problems associated with the common law issues of bias/predetermination.
 - (c) The effect of the Council and/or Cabinet formulating a position on these renewable energy issues and/or issuing press/public statements on the matter.
 - (d) The implications of the Council's bespoke Planning Protocol.
 - (e) The position of Councillors involved in the Community Benefits System.
 - (f) The position of the Portfolio Holder for Regeneration and Culture.

7.2 These issues are now discussed in turn in more detail below.

G8 Council Debate on TAN 8

- 8.1 In terms of the debate on TAN 8 by the County Council on the 29th June this poses some difficult issues around members interests.
- 8.2 On balance it seems fairly straightforward that those Members who have personal interests, as defined in the Members' Code of Conduct, in relation to wind farms, hub, pylons, etc. should disclose such interests at the commencement of the debate.
- 8.3 The more difficult point is around whether, if such an interest does exist, it would constitute a prejudicial interest. Although it would depend, to some extent, on the category of interest involved the nature of the business is also relevant and given that the object is not to make Council policy but essentially to lobby the Welsh Government to change its' policy this, it could be argued, would support a view that a member with an interest would not be perceived as having a prejudicial interest by a member of the public.
- 8.4 That said it seems inevitable that during this debate and generally the Council and/or Cabinet will take a stance on these renewable issues. The expectation is that the Council and/or Cabinet will wish to make its stance known and that will be likely to be clearly articulated in discussions and communications with Government, Politicians and Others.
- 8.5 To remove any doubt over the position of Members under the Code of Conduct in relation to the debate on TAN 8 at the Council meeting on the 29th June the Committee is asked to consider granting a blanket dispensation to all Members with personal and prejudicial interests.
- 8.6 Given the nature of the debate (concerning Welsh Government policy) which it can be supposed residents will want their elected representative (notwithstanding any interests) to take a full part in debating and voting on the Committee may consider that it would not damage public confidence for any member with an interest (whatever that interest) to be granted a dispensation to both speak and vote in this debate.

G9 Dispensations to Non Decision Makers

- 9.1 At the last meeting the Committee only considered the question of granting a dispensation to non-decision makers (Councillors not on either the Cabinet or Planning Committee) in respect of the hub, pylons and overhead power lines. Being content to grant full and complete dispensations in that respect there would seem to be no grounds for not extending the current dispensations to cover all related renewably energy matters such as wind farm applications road network/transportation issues and policy related topics.

G10 Dispensations to Decision Makers - General

- 10.1 The third point in paragraph 17 above is perhaps the most difficult. On the last occasion the Committee understandably took a cautious approach and in that

first instance decided not to grant dispensations to decision makers on the Cabinet or Planning Committee.

- 10.2 The Committee at the meeting will be given details of the types and extent of interests detailed by Members in the forms returned by the time of the meeting so as to have the most up to date information.
- 10.3 Put very simply the Committee has two main options. First is to decide to continue with its previous decision not to grant any form of dispensation. The alternative, of course, is to consider granting some form of dispensation.
- 10.4 For the assistance of the Committee the grounds for granting a dispensation are attached as **Appendix 7**. Clearly ground (d) and the need to have regard to not damaging public confidence is always a significant consideration.
- 10.5 There is no doubt as to the enormous significance of this issue to the County and its residents. It may be viewed as being virtually on a par with the school modernisation programme in terms of importance and impact. On that occasion the Committee granted blanket dispensations both to speak and vote to all Councillors in respect of all prejudicial interests, save those of a pecuniary type.
- 10.6 The Committee may be minded to take a similar approach in this instance. Were it to pursue that course there would need to be clear cut decisions as to the extent to which pecuniary interests resulted in a blanket dispensation not applying. For example there would be little justification in drawing a distinction between financial benefit and financial loss. Decisions would also be needed on the extent to which financial interests affecting third parties should result in a member not having a dispensation e.g. pecuniary/financial interests of spouse, partner, close family member, business partner/associate etc.

G11 Uncertainty as to Councillors who will be Decision Makers

- 11.1 The Committee are aware that decisions relating to all of the various matters referred to in this report concerning renewable energy matters in north Powys are likely to be taken over a prolonged period of time likely to stretch over years rather than months.
- 11.2 With Local Government Elections due to be held in May, 2012 there is a clear likelihood that membership of both the Cabinet and Planning Committee will change to some extent for the membership which exists at the time of this report.
- 11.3 Although reference to decision makers hitherto has been confined to Members who sit or will sit on the Cabinet and Planning Committee there is also the possibility that the full County Council or one of its Committees, particularly a Scrutiny Committee may debate a matter that concerns renewable energy in north Powys.
- 11.4 In the event of the Committee granting a dispensation to decision makers the difficulties highlighted above may be greatly reduced but depending upon the decision taken by the Committee there may be a remaining need to draw all Members attention to this particular aspect.

G12 Problems Associated with Bias/Pre-determination

- 12.1 Notwithstanding the Committee deciding to grant dispensations to decision makers that does not remove difficulties for the Council and Members in terms of issues of common law, bias and pre-determination.
- 12.2 As mentioned above whilst this is outside of the control of the Committee advice is being sought from Leading Counsel. If that is received by the time of the meeting the Committee will be briefed on that by way of putting the whole picture in context.

G13 Affect of Council/Cabinet formulating a position on these Issues and/or Issuing Press/Public Statements

- 13.1 There is a growing pressure on the Council and Cabinet to make its position clear on these issues. Undoubtedly statements will be made in Local Authority meetings open to the public and press statements will be issued.
- 13.2 Whilst this is an issue that predominately appears to concern pre-determination the Committee needs to be aware of this in the overall context of the matter.

G14 The Council's Planning Protocol

- 14.1 The requirements of the Council's own Planning Protocol should not be overlooked and members will need reminding of the procedures that it lays down both for Councillors who sit on the Planning Committee and those who do not.
- 14.2 Any dispensation granted by the Committee will not affect the Protocol the terms and requirements of which will need to continue to be adhered to.

G15 Community Benefits System

- 15.1 As the Committee may be aware there is in existence arrangements for Community Benefits to be forthcoming as a result of wind farm development in a particular locality. The arrangements regarding those Community Benefits are dealt with locally and County Councillors are often involved.
- 15.2 Such involvement may well be perceived as constituting a conflict of interest for such Councillors in the eyes of the public and the Committee is asked to specifically deal with this point in relation to any dispensation decision.

G16 Position of Portfolio Holder

- 16.1 Any decision to grant some form of blanket dispensation to decision makers would render it necessary to revisit the position of the Portfolio Holder for Regeneration and Culture.

G17 Conclusion

- 17.1 The Committee will need to take all these matters and issues into account in their deliberations and decision making.

- 17.2 In the event that the Committee does decide to grant some form of blanket dispensation to Councillors who are decision makers then for the sake of completeness it needs to extend to those additional matters referred to above i.e. wind farm applications, transportation issues and policy related matters including TAN 8 and (if appropriate) consider the points made in Paragraphs 10.5 and 10.6 above.

H Whistleblowing Policy

The draft Whistleblowing Policy is attached at **Appendix 8**. The policy has been considered by the Wales Audit Office (WAO) who have made no comments. It will be considered by the Audit Committee on 27th June 2011 and this committee's comments, together with the Audit Committee's comments will be forwarded to the Portfolio Holder for consideration prior to signing off the policy.

I Standards Conference

Peter Keith-Lucus has kindly agreed to run a Mock Hearing for the Standards Conference and a copy of the revised programme is attached at **Appendix 9**.

J Attendance at Committee

The attendance figures for the period 1st October 2010 to 11th May 2011 are attached at **Appendix 10**.

K Gifts and Hospitality Register

The Gifts and Hospitality Register is attached at **Appendix 11**.

K1 Observing other Committees

The dates of committees from September to November 2011 are attached at **Appendix 12**. Independent and Community Council Members are invited to advise the clerk of any committees they would wish to observe.

L. Meeting Dates.

L.1 To note dates of future meetings as follows:

7th September, 2011
30th November, 2011

1st February 2012
4th April 2012
4th July 2012
5th September 2012
5 December 2012

All meetings to commence at 10.00am with the option of training available afterwards.

Contact Officer Name:	Tel:	Fax:	Email:
<i>Clarence Meredith, Strategic Director – Law and Governance</i>	<i>01597 826395</i>	<i>01597 826220</i>	<u>Clarence@powys.gov.uk</u>

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