# audit 2003/2004



# **Probity in Planning**

# Stratford on Avon District Council

## INSIDE THIS REPORT

## PAGES 2 - 5

## **Summary Report**

- Introduction why is probity in planning important?
- Background
- Audit scope and approach
- Main conclusions

## PAGES 6 - 31

## **Detailed Report**

- The Area Planning Committee system
- · Committee processes
- Decision making
- Code of Conduct
- Committee and file records
- Planning obligations

#### **Action Plan**

Reference:	savondc2 Probity in Planning 03-04 – Final
Date:	26 February 2004 RP/JJ

## Introduction - why is probity in planning important?

- 1. Planning decisions are often high profile, politically and publicly sensitive. They also can have a considerable impact on the environment, land values and general quality of life. It is therefore important that all local authorities:
  - have good systems to make planning decisions, but also that:
    - those decisions are made with integrity and follow established Planning policy.
- Events in other authorities, which are public knowledge and have resulted in prison sentences, showed what can happen when planning decisions are not made with integrity. These cases also showed that flawed planning systems can be found in any size and type of local authority.
- 3. The Nolan Commission reports on Standards in Public Life made a large number of recommendations for improving probity, transparency and consistency. Since the reports were issued, many councils have made sweeping changes to their Planning arrangements. Those who have not are failing to harness best practice and the improvements which this can bring.
- 4. Probity is also important in all other aspects of Council life. The new Council structures include Scrutiny and Standards functions, which are expected to ensure good corporate governance in all public service operations. The delivery of high standards of probity is also vital in maintaining the Council's public reputation.

## **Background**

- 5. The Council's Planning arrangements were risk assessed in 2001/2002. This was a very short audit reviewing data on planning activity and meeting with some senior officers. This risk assessment raised a number of issues which required further investigation. Time was set aside in the audit plan for 2003/2004 for a more detailed review of the main areas of risk, which were:
  - the decision-making processes, with emphasis on:
    - relationships with applicants, objectors, Parish councils and developers (referred to as 'third parties').

## **Audit scope and approach**

- **6.** The scope of the audit was agreed with the Head of Regulatory Services. The audit was designed to test agreed risk areas within the planning process within a defined audit budget. Our approach involved a wide range of activities and people, as follows:
  - interviews with the members Chairing all four Area Planning Committees (APCs) and the Planning & Regulation (P&R) Committee
  - interviews with the Council Leader, the portfolio holder for Planning, the Head of Planning and Regulation, The Monitoring Officer, the Director of Corporate Services, the Democratic Services Manager, Principal Planning Officers (East and West), one Senior Planner, the member Chair of the working group on APCs, a phone conversation with a senior Legal Officer
  - attendance at one meeting of each APC and the P&R committee

- an on-site file review of a sample of overturned officer recommendations in a specific
   12 month period
- a review of additional key documents.
- 7. Although this audit is primarily concerned with probity, the fieldwork also identified other issues about future operation of the committees and current practices and procedures. These are included in the report and recommendations are made where we believe they will be helpful.

## **Main conclusions**

- 8. The Council's planning process needs significant improvement to meet appropriate levels of probity. There is an urgent need to address the imbalances between some members' views of the process and what the process requires. We have seen some areas of good practice, in particular.
  - Meetings with developers we noted one instance where certain members had been asked to attend a developer presentation. Officers attended with members and clear notes were placed on the case file.
  - Site visits they are generally limited to only when necessary and not used as a deferral mechanism, though the numbers have increased over the last 4 years.
  - Belief in the system members genuinely believe in planning in Stratford district and in most cases are doing their best to deliver what they think is best (but some of the systems and support do not help them deliver this properly).
  - Officer quality officers are well qualified and present well structured cases for members to vote on; the practice of requiring members who overturn recommendations to propose new reasons themselves shows a high degree of integrity.
  - Member quality attendance at meetings and interviews have confirmed that the Council
    has some high calibre members who should be encouraged to continue as planning
    committee members under any restructured system.
  - The Planning and Regulation Committee acts as a useful safety net for some decisions which go against Local Plan policy.
  - Shortly after the Audit Commission started fieldwork, a working group met to discuss the future of APCs, and this work has been ongoing in parallel to the audit.

These areas of good practice are overshadowed by weaknesses.

#### The Area Planning Committee system

- 9. The Area Planning Committee (APC) system established in 1994 exposes the Council to risk of greater public influence, and this risk was understood at that time. However, changes in membership since, inadequate controls and lack of member training have allowed poor practices to become part of the established culture. The constitutional requirement that all members are appointed to an APC exposes the Council to potentially greater conflict of interest than other district councils, and therefore greater risk of flawed decisions.
- 10. We acknowledge that the Working Group on APCs has identified some of these issues but there are no formal recommendations yet, or Council endorsement. Therefore the Council's probity environment compares poorly to many similar local authorities. These risk areas should be addressed urgently.

## **Committee processes**

- 11. The Working Group has identified that some committee processes need to be improved. We agree, particularly in relation to public speaking practices and Parish rights.
- 12. The Council introduced public speaking at APCs and Planning and Regulation Committee well before this had become common practice. The reasons for doing this were sound. However, over time, the systems have lost their robustness and inappropriate practices have developed. The Council is unusual in allowing members to question speakers at length. We observed:
  - protracted questioning, sometimes amounting to rigorous cross-examination (lasting up to half an hour)
  - members asking leading questions to bring in new facts which they wish to introduce to the debate
  - members asking questions which have no bearing on the policies against which the application is being judged.
- 13. Parish councils have a high profile and level of influence in the Council's planning committee process. The external consultant's report (the Brady report) on the Council's planning processes in 1999 stated that Parishes needed to make strong cases for referral and officers should exercise more control. Officers and members interviewed confirmed to us that Parish requests are still usually referred to the relevant committee with limited challenge. Therefore the Council is responsible for perpetuating an established culture of Parish influence over the decision-making process. This presents a significant probity risk.
- 14. The Brady report also found that members were asking for cases to be referred to the committees without valid planning reasons, and officers were not managing the process effectively. This is still the case and Stratford's practice compares relatively poorly to other districts.

#### **Decision making**

- 15. The environment for making decisions contains some serious probity risks, including possible breaches of the National Code of Conduct and apparent pre-determination of applications. The Council's decision-making process compares poorly to (a) the practice in many districts already subject to this study, and (b) AC best practice identified. The key risks are as follows.
  - The Council's own data shows deterioration in key planning indicators between 1997/1999 and 2001/2003; the officers' own report to the working group states that there is a far higher success rate on appeal against member decisions than for officer delegated ones.
  - A lack of respect for officers' assessment of Local Plan policy and recommendations; possible breaches of the National Code of Conduct and decisions at odds with Local Plan policy.
  - Evidence which would lead a reasonable person to perceive pre-determination and bias in some members' decisions.
  - Poor attendance at site visits coupled with an old site visit protocol.
  - Intermittent training, not linked to an overall training strategy or 'core components'
    approach; new members not receiving adequate training for some time after joining the
    APCs; 75% of current members would be disqualified from serving if the rule on
    mandatory training was enforced.

- Inadequate monitoring and review of decision-making patterns in the APCs by both officers and members; static (high) levels of overturned officer recommendations in one of the APCs.
- Inadequate challenge to and reporting of poor behaviour (conduct and apparent pre-determination) by both officers and members leads to a weakened Monitoring Officer role; no Legal Officer is present at committee meetings which is different to most other authorities.

#### **Code of Conduct**

16. The Council adopted a local Planning Code of Conduct in October 2003 to supplement the more general Member Code of Conduct. This is two to three years later than in many local authorities, with the impact that formal acknowledgement of probity has lagged behind most others. Adoption of the Code needs to be supported by training, practical application by members and Monitoring Officer review. We expect the Council to clearly set out sanctions if members do not comply with the Code.

#### **Committee and file records**

17. Committee papers presented by officers are good. They are well written and consistent, with an excellent executive summary. Our main concern is the different treatment of representations within these reports. Applicants' comments are reproduced extensively and often in full, but other parties' comments are summarised. This is giving inappropriate prominence to the applicant's case and could be used against the Council if another third party perceives themselves to be treated unfairly. All representations should be treated equally.

## Status of our reports to the Council

Our reports are prepared in the context of the Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission. Reports are prepared by appointed auditors and addressed to Members or officers. They are prepared for the sole use of the audited body, and no responsibility is taken by auditors to any Member or officer in their individual capacity, or to any third party.

## **The Area Planning Committee system**

#### **Main conclusions**

- 18. The Area Planning Committee (APC) system introduced in 1994 was a bold and innovative step, well ahead of its time. It created 4 separate areas (Avon, Arden, Dassett and Stour) to bring in public participation and demonstrate how decisions were made. Those involved at the time understood the risks of a localised decision-making system. However, changes to the membership of the Committees have diluted awareness of the risks of area-based decisions.
- 19. An area committee structure is not necessarily a probity risk, as long as there are strong consistency processes and regular member training. Officers have not overseen the committees effectively and the impact of leaving the APCs to largely manage themselves are widespread. The P&R (Planning & Regulation) Committee still acts as a useful safety net for decisions which go against Local Plan policy, but the APCs can manipulate the process so that not all decisions against Plan policy are referred upwards. The P&R committee also does not police other aspects of the APCs where problems arise. The effect of this is a culture in which Parish and local public opinion are often seen as central to the process. Local plan policy and statutory consultee views have become increasingly peripheral. These issues were highlighted in the Brady report in 1999, and our evidence suggests that there has been limited movement on the substance of this report.
- 20. We recognise that officers can only exercise control within the established constitution and any supporting schemes of delegation. The Council needs to update these supporting frameworks in the light of the Brady report and our findings. However, there are areas where current practices could have been improved since 1999 without having to change the constitution.
- 21. Over time, Members and officers have allowed the failures to accumulate, and they must work together if Planning is to operate with integrity in the future.

## Structure of the APC system

- 22. The working group started reviewing options for a revamped APC system in July 2003, shortly after our fieldwork was started. It is encouraging that the authority recognised the need to change and has been considering the issues in parallel with our work. No firm conclusions have yet been reached, as the audit is a key component in the review process.
- 23. Development pressures in the district are intense, with the Council receiving approximately double the number of planning applications which an average district copes with. However, under new Government guidelines, the focus of development must be on sustainable locations. This means most of the activity will be in Stratford town, some in sustainable rural centres such as Shipston and minimal amounts in rural areas.

Base data	1997/1999	2001/2003	Analysis
Number of applications	4,133	4,724	+14%
Number of applications decided by members	781	678	-13%

- 24. The four APCs reviewed 678 applications between April 2001 and March 2003, which is approximately 7 items per committee meeting. The working group is consulting with members on four options including a 'no change' option. The number of applications referred to APCs has dropped by 13% since the first data set in 1997/1999 because of an increase in officer delegation. With the change in emphasis for applications, this reduction may adversely affect committees which are largely rural in character. Against this background, we believe a 'no change' option is not viable, and that the Council should be realistic about the future viability of all its area committees.
- **25.** Stratford is very unusual in having four Area Committees. The Audit Commission's database of planning indicators, compiled when the audit was started in 1999/2000, shows that out of 240 district councils who participated:
  - only 9% had two development control committees
  - only 4% had three development control committees
  - only 3% (7 authorities including Stratford) had 4 development control committees.
- 26. This means that as at 31 March 1999, 84% of district and borough councils had a single planning committee determining planning applications. Since then, it is likely that authorities have reviewed and changed their planning/probity environments in recognition of the inconsistency which area committees can introduce to the decision-making process.

## **Cost of the APC system**

- 27. Moving to fewer APCs would reduce the cost of administration and may improve officer productivity. It would also be easier to manage the remaining APCs to give more consistency. An important aspect of probity is the extent to which people are treated fairly and also perceive that they are treated fairly. Inconsistent processes and outcomes between the area committees can give the impression of unfairness. These issues are discussed later in this report.
- 28. An estimate of the cost involved in additional committee administration was made in 1994 when the APC system was established. The exercise has not been repeated and the original exercise did not include member costs. Officers have confirmed that they can spend up to 40% of their time dealing with committee-related matters. This may be particularly so because all members are on one of the committees, therefore the level of enquiries fielded is likely to be higher than other districts which have one central committee with, on average, 17 members.
- 29. The Head of Regulatory Services considered that the four APC systems may require the Council to maintain more highly qualified officers on its complement than other districts. This could explain the high cost per head of planning applications. These issues, and the cost of member time and allowances need to be taken into account when considering future options for the APCs.
- 30. The working group should be provided with an up to date assessment of the officer and member cost (time and expenses) involved in continuing to operate all four APCs, and the effects of dropping to fewer committees. It can then use this information, the member consultation findings and our report to make a balanced judgement on which option is preferred.

## **Membership of the APCs**

**31.** All members have an automatic appointment to one of the APCs under the Council constitution. There are several problems which arise from this which affect the probity environment.

#### **Conflicts of interest**

- 32. Professions are represented which have a greater probity risk for planning estate agents, property developers, local landowners. These members are more likely than others to be made uncomfortable in the role of planning committee member by the combined pressures of their local business interests, the ward member advocate role and the constraints of the planning system. Their property-related background may also give rise to a perception by the public that they are more likely to be in favour of development, even where they are determining cases completely impartially.
- 33. The working group has identified that not all members wish to be on a planning committee because of these conflicts, and this is supported by our fieldwork. 'No change' to the APC system would place unreasonable pressure on those members who would prefer to be a ward advocate rather than a planning decision-maker. The group is considering options to remove these tensions. No firm decisions have been taken on making membership of APCs voluntary, or how many members are required to deliver any new structure. The issue of how many members are necessary or desirable to deal with development control applications, and what is/is not an appropriate profession should be resolved.
- 34. It is worth noting that these conflicts of interest have come to the fore in other high profile cases. Some other authorities actively discourage or prevent members from serving on planning committees where there are potential conflicts of interest with their professional roles. One such example is Amber Valley where they actively screen members' professional backgrounds before deciding who should serve on their single committee. They also (as at November 2000) had a system of screening declarations of interest to make sure that members were participating appropriately and not barred from engagement because of their interests.

#### **Mandatory training**

- 35. The 'Brady' report in 1999 recommended that members should be required to undergo mandatory training as a condition of continued APC membership. The Council established this as 18 hours in any 2 year period. Training logs show that 75% of members are *not* meeting these requirements (whether in full or where hours are calculated pro-rata to election date) and should therefore be barred from participating. However, as the constitution requires them to be on an APC, the Council cannot enforce the condition. It has however not taken measures to enforce the condition.
- 36. Having specified member training improves the quality of decisions and increases the likelihood of probity being maintained (or improved). The Council should amend the constitution to ensure that members can be removed from committees temporarily while they fulfil their training quotas, or permanently if they consistently fail to meet the requirement. It should ensure that training uptake is actively monitored and reported on at regular intervals (not exceeding 12 months) to the monitoring officer, Standards Committee and APCs as part of routine performance review (see reactive monitoring).

## Ward member vs planning committee roles

37. There are significant tensions between the ward member role as 'local campaigner' and the requirement for planning decisions to (in most cases) be made in accordance with established Local Plan policies. This is particularly acute in Stratford District Council because decisions are devolved to areas. Public pressure to make popular local decisions is high, often from well organised and articulate groups. There is evidence of how this pressure has led to members apparently voting against local plan policy. The working group is considering removing this tension by allowing ward members to act as a local campaigner, but not vote on applications in their ward. This is a sensible compromise, as a significant number of members are likely to remain on APCs under any future voluntary arrangements.

## **Consistency of the APCs**

- **38.** Having four individual committees increases the likelihood of inconsistency. Strong monitoring is needed to ensure that the pattern of decisions and conduct of meetings is (as far as possible) similar over time, otherwise public and developer confidence can be affected. Developers in particular may begin to concentrate their efforts in areas where committees are seen as weaker and less inclined to follow policy.
- **39.** The Head of Regulatory Services maintained an overview of committee activities and advised members/committee Chairs as appropriate. However, the consistency checking has not been sufficiently formalised to provide robust data on whether the committees are consistent, or trigger effective action to tackle any inconsistencies which arise.

#### **Pro-active checks**

- 40. APC Chairs and key officers used to meet to discuss similar applications before they appeared in the committee papers. This lapsed several years ago and, other than the meeting between the principal officer and the Chair of each committee, there is no pro-active review in place across all the APCs. According to evidence gathered via interview, this has led to APCs determining similar applications very differently, though no specific examples were offered as evidence. The committee reports produced by officers are consistent between committees, therefore differences in determination and overturn rates are related to each committee's interpretation of planning policies and material issues. Planning activity and overturns rates are discussed later in this report.
- **41.** The lack of a formalised pro-active review of consistency places officers and members in a weak position if they are required to refute public suspicion of unfairness. Perceived, or actual, inconsistency for which the Council has no reasonable answer can lead to a significant loss of public and developer confidence.
- **42.** In other local authorities with area structures, various means are used to ensure that some pro-active monitoring takes place, such as:
  - a regular briefing involving the Head of Planning and all Committee Chairs (and often vice Chairs) such as observed in Malvern Hills
  - the Head of Planning screens applications which are similar and brings these to the relevant Chairs' attention, with advice on similarities/differences and implications of determining the cases differently, such as in Derbyshire Dales
  - the Head of Planning attends meetings where these cases come before members to offer advice on the day.

**43.** If the Council remains with an area committee structure, it should re-introduce some pro-active consistency checks so that it can identify and deal with any patterns of inconsistency which arise.

#### **Reactive monitoring**

- 44. Officer monitoring of planning Best Value Performance Indicators (BVPIs) takes place regularly. Members are sent monthly information sheets which include BVPI performance but this is not an active monitoring exercise. It is common practice among most district councils to report BVPIs and enforcement performance on a quarterly basis to the meeting of the development control committee(s) and discuss outcomes/actions. Examples of this have been seen at Staffordshire Moorlands, Derbyshire Dales, Malvern Hills and South Shropshire to name a few. In this respect, Stratford is well behind best practice in other authorities.
- **45.** Until recently, no comparison had been made of planning activity between the APCs and this exercise was completed for the first meeting of the working group. Regular comparative monitoring is still not in place. Members and officers therefore do not have any reliable data to make judgements about whether any of the APCs are doing a good job, or have become better or worse in any given period.
- **46.** The Head of Regulatory Services reported to the working group in July 2003 that there was inconsistency in the pattern of decisions between committees and particularly that:
  - appeals against member decisions were much more likely to be won than against officer delegated decisions
  - Dassett, Avon and Arden all had marked decreases in overturned officer recommendations within the last 12 months, but Stour's had continued at the same level, indicating the need for more investigation (which has not followed).
- 47. The Council should set basic standards which, if met, demonstrate the APCs are doing a good job. It should then monitor comparative activity for items such as total applications received, numbers/% of overturned recommendations, appeals lost/won, complaints etc on a regular basis between each one. This should be reported back to the APCs and to P&R committee. Monitoring should provide evidence of danger signals so that action can be taken promptly to address the issues. This monitoring should also indicate any clusters of overturns, so that policy areas where members have difficulty are addressed in local plan reviews, and linked with member training programmes.

#### Recommendations

- R1 The working group should be provided with an up-to-date assessment of the officer and member cost involved in continuing to maintain all four APCs, and the effects of dropping to fewer committees.
- R2 The Council should decide how many members are necessary or desirable on the new APCs, and which professions may be incompatible with membership.
- R3 The Council should:
  - · amend the constitution to resolve the conflict with a requirement for mandatory training
  - ensure that the local planning code includes a provision for members to be temporarily suspended or permanently barred for not meeting the training requirement
  - ensure that training uptake is monitored and reported to the monitoring officer,
     Standards Committee and APCs as part of routine performance review (see reactive monitoring) at least once every 12 months
  - establish clear responsibilities which for the monitoring officer and/or the Standards Committee to enforce the mandatory training condition.
- R4 Agree the working group suggestion that members can speak on applications in their ward, but not vote.
- R5 Introduce pro-active consistency checks on similar applications which are being heard by different APCs.
- R6 For APC reactive monitoring, the Council should:
  - set some basic standards, indicators and danger thresholds which demonstrate a successful APC
  - monitor comparative activity for these indicators on a regular (at least 6 monthly) basis
  - report the comparative information back to the APCs and to P&R committee and document actions required
  - clearly set out who is responsible for taking action over poor performance
  - link difficult areas or poor performance to member training programmes.

## **Committee processes**

**48.** The working group has identified that some committee processes need to be improved. We agree, particularly in relation to public speaking practices in general and Parish rights.

#### **Parish Council referral**

- **49.** Parish councils are important for gathering local information, but how they are handled by the Council gives them a perceived high value, and therefore influence, within the planning process.
- 50. Parish councils are entitled to request that a delegated application be heard by the APC as long as they give valid planning reasons. In practice, Parish comments (as evidenced on case files) have often simply asked for the matter to be referred. The Brady report in 1999 stated that Parishes needed to make strong cases for referral and officers should exercise more control. Our fieldwork confirmed to us that Parish requests are still usually accepted with limited challenge and the cases referred to the relevant committee. Therefore the Council is responsible for perpetuating an established culture of Parish influence over the decision-making process.
- **51.** There is also evidence that Parish representatives fail to attend APCs when they have requested an item on the agenda, which is a source of frustration for officers and members. It also adds an item to the agenda which otherwise would not be there under officer delegated powers.
- **52.** The number of items referred to committee via this route may be relatively small but the effect is potentially damaging to the authority's reputation. We believe this perception of Parish importance (based on established custom and practice) is a significant probity risk, as we have observed APC members voting with the Parish view where the Parish has not provided any material planning reasons for this view.
- 53. Parish councils should not have rights to intervene in the delegation process and referral powers should be restricted to APC members. The working group proposal that Parish councils can only refer applications to the committee where the ward member agrees, and for valid planning reasons, still gives the Parishes a significant status. It is a useful half-way point between the current position and an outright bar on Parish rights of referral. However, in order for it to work it will need to be robustly managed, to avoid collusion between the ward members and the Parish Council to place items on the agendas unnecessarily.

#### **Member referral**

54. The Brady Report in 1999 found that members were asking for cases to be referred to the committees without valid planning reasons, and officers were not managing the process effectively. Our evidence (from file reviews and interviews) indicates there is still limited challenge to member requests for referral even where valid planning reasons are not given. The Head of Regulatory Services should be responsible for making the final decision where the matter would normally fall clearly within officer delegated powers. Where the case is borderline without the member request, the Chair of the relevant Committee should be involved in making that decision. Members who make requests which are not considered suitably justified should be notified when and why their case is not sufficient, not only to protect probity but also to aid member training. This should be included in the local planning code.

## **Chairmanship**

55. The average Chairmanship in 1997/1999 was 2 years. Our experience is that most planning Chairs tend to serve for about 3 years after which time they step down. Some are forced changes due to elections but many seem to be because planning is a demanding subject and they wish to have a break from it. New Chairs tend to have a higher risk attached to them because they have a steep learning curve and need more support in the early stages of their Chairmanship. However, our experience with the Chairs at Stratford is that they are capable, but need some added support relating to their specific planning and committee management responsibilities.

Length of Chairmanship	1997/1999	2001/2003
No of years current Chair has held office Area 1 Committee.	1.5	1.5
No of years current Chair has held office Area 2 Committee.	0.5	0.5
No of years current Chair has held office Area 3 Committee.	2.5	0.5
No of years current Chair has held office Area 4 Committee.	N/A	1.5

- **56.** Our observation of each committee found that Dassett, Avon and Stour were Chaired reasonably well. The meeting we attended at Arden committee was difficult because of a huge public turnout and several very contentious items on the agenda. The atmosphere was highly charged, with members of the committee and the public both responsible for some of the management issues which arose.
- 57. Generally, Chairmanship control of the meetings is on a par with most councils. However, all of the APCs attended demonstrated some Chairmanship issues, which are linked to:
  (a) lack of enforcement of mandatory planning training; and (b) absence of training for Chairs on their role as a Chair of committee. These issues include:
  - not being robust enough with non-material information (ie where the person speaking, member or public, was not making planning arguments)
  - not curtailing members where they were taking excessive time over questioning or making their own points known
  - an established culture of allowing most members to have their say, even when no new planning points were being raised, which simply consumes time in debating without adding quality to the eventual decision.

58. Interviews confirmed that Chairs had never had training on good meeting conduct and control and they thought it would be helpful, especially when new to Chairing committees. This should be introduced as part of the mandatory training. An overview of Chairmanship quality needs to be introduced in parallel so that Chairs who do not perform well are re-trained or replaced.

## **Public speaking**

**59.** The Council introduced public speaking at APCs and P&R committee well before this had become common practice. The reasons for doing this were sound. However, over time, the systems have lost their robustness and inappropriate practices have developed.

#### The three minute rule

- 60. Each side of the argument (for and against) is allowed a total of 3 minutes public speaking. If more than one person wishes to speak, the time should be split between them. Our observation showed that Arden committee allowed all speakers 3 minutes each. The Chairman confirmed that he does not follow this rule when more than one person wishes to speak because in his opinion it does not give them enough of a say. This is inconsistent with the agreed policy. Its effects are a longer meeting, and that other APCs who follow the rules are seen as less fair or public spirited. Where there is significant opposition or support, the weight of numbers engaged in public speaking at Arden may be enough to sway members' decisions.
- 61. It is normal practice in most authorities to aim for one spokesperson per 'side' of the argument. Where more than one person wishes to speak for or against, the Council normally notifies them and they elect a spokesperson for the group. This could be the Parish Council representative, the ward member or a member of the general public with specific knowledge. This would allow each side the full three minutes without the Chair having to be concerned about whether each person had the right length of time.
- 62. The working group is considering allowing ward members to act as local campaigner by removing their right to vote on applications in their ward. If this is approved, ward members will in effect be acting as a public speaker. They should therefore be treated exactly the same as any other public speaker under whatever rules the Council agrees and make their address from outside the committee table. Arrangements for member public speaking should be part of the local planning code.

#### **Questioning of speakers**

- 63. The Council is unusual in allowing members to question speakers directly, and at length. In most councils, questions after the speaker has finished are limited to points of clarification only, most often through the Chair. We understand that this is the way questions were intended to be used when the system was set up. In practice, we have observed across all committees:
  - protracted and direct questioning by members, sometimes amounting to rigorous cross-examination of the speaker (lasting up to half an hour)
  - members asking leading questions to bring in **new** facts which they wish to introduce to the debate
  - members asking questions which have no bearing on the policies against which the application is being judged.

#### **PUBLIC SPEAKING - NON MATERIAL QUESTIONING**

In a case before Arden APC, the issue to be addressed was the <u>size</u> of the extension proposed on a small house. The house, while being regarded by the public as part of the village, was outside the village boundary as defined in the Local Plan. It was therefore defined as being in open countryside.

The size of the extension was more than permitted by the policy covering extensions in open countryside and the officer recommendation was to refuse permission in accordance with that policy.

One member asked the applicant how many bedrooms the house had now, and how many it would have when extended. The actual **number** of bedrooms was not material. The material fact was that the extension was larger than the permitted level.

The question should have been noted as non-material by the Chairman and members asked to disregard it, and the answer. The Chairman should have referred members back to the policy on extensions in open countryside.

Note that in this case, the members voted against the local plan policy. Arguments advanced were that the dwelling was an 'eyesore' in its present form, that something needed to be done with it and a one-bedroomed house was considered not efficient for modern day living.

- **64.** The working group has also identified that manipulation of public speaking needs to be addressed. We recommend that cross examination of speakers by individual members should be replaced by questions for clarification only of what the speaker has actually said, through the Chair. This gives the opportunity for the Chair to ensure that questions are relevant and are points of clarification.
- **65.** We acknowledge that managing non-material representations and questions can be difficult because a balance has to be struck between allowing freedom of expression and intervention. Within the Council, our experience is that the Chair of Avon committee tends to strike the best balance between allowing representations and materiality, and is comparable to other authorities we have visited.

#### Parish Council right to speak

**66.** In principle, involving Parishes is not a risk to probity. In the Council's case, we have seen how the system prior to committee gives Parishes a higher status than normal, and creates an expectation that their views have more value. Giving the Parishes an automatic right to speak increases this perception of importance.

#### **PARISH VIEW VS PLAN POLICY**

In a case which came before Dassett APC, Parish Council views were strongly against conversion of a small, semi-derelict brick building into low impact employment. Several members clearly stated that Parish opposition was among their principal reasons for being minded to vote against.

Members overturned the officer recommendation to grant permission by a small majority. However, those members then could not clearly state any specific planning policies to support their decision. The item had to be put to a new vote and permission was granted in accordance with the original officer recommendation.

67. We have already mentioned that in the majority of authorities with public speaking, the Parish Council often is elected as spokesperson for one side or the other. This is fairer than the Council's current arrangement which automatically gives the Parish Council a separate position and therefore increased status. The Parish Council should not have a separate right to speak, unless all other speakers for or against are given the same opportunity (ie 3 minutes each).

#### Late evidence from public speakers

- **68.** There is an established culture of allowing public speakers to submit new hard copy information during their speech. We observed this particularly at Stour and Arden APCs.
- **69.** In some cases this is being used to deliberately confuse or cloud members' judgement. There is a risk that third parties will increasingly use this tactic if it means they can get the decision they want.
- **70.** All public speakers must be informed that submission of hard copy or other evidence to support their case must be in advance of the meeting and that no evidence will be allowed at the meeting. If they try and submit new evidence at the meeting the Chair must refuse to accept it.

## Officer presentations

- 71. We have observed that some officer presentations have been time consuming and repeated large tracts of the committee report, although others managed to present the key facts simply and succinctly. We accept that an officer introduction is useful for members of the public and to refresh members' minds on the content of each case. However, officer presentations have, over time, become extended to compensate for lack of preparation by some members.
- 72. Members of the committees have a responsibility to prepare adequately for the meeting. They can do this by reading the reports, asking questions of officers directly before the committee and viewing the plans. Some members take good advantage of this. The officers' reports are good quality and summarise all the relevant facts and policies very well.
- 73. We observed some members asking questions about subjects which were clearly described in the officers' reports. It is not officers' responsibility to make allowances for members who do not prepare properly for the meeting, though some introduction is necessary. We suggest that the case officer presentation is primarily limited to key facts and any new information since the paper was written. This is standard practice in all other authorities the auditor has visited. The case officer should bear in mind the 3 minute rule for public speaking as a benchmark for the length of their introduction.
- **74.** In some councils, an assessment of late updates is provided in written format, which helps members make their decisions and provides a more defensible position in case of challenge. The Council should consider this.

#### Recommendations

- R7 Remove the Parish Council's right to call in an application.
- R8 In respect of requests for items to go to APCs:
  - set up screening which ensures that those making the request are notified when and why their planning argument is not sufficient to trigger referral
  - assign responsibility for making that decision and include this in the local planning code.
- R9 Introduce training for APC (and possibly all) committee chairs on good meeting conduct and control as part of their mandatory training.

## R10 For the three minute rule:

- review the current process for determining who acts as a public speaker and ensure that under new rules, all public speakers are treated equally at each APC
- ensure that ward members who are designated to act as public speakers for applications in their ward are recognised as such, are bound by the public speaking rules and make their address from outside the committee
- remove the Parish Council's automatic right to speak under a review of public speaking.
- R11 Ensure that questions to public speakers are placed through the committee Chair and are limited to points of clarification only.
- R12 Instructions to speakers should make clear that all evidence to support their case must be submitted in advance or disallowed.
- R13 Provide a brief written summary of late updates for members.

## **Decision making**

75. The environment for making decisions contains some serious probity risks, including possible breaches of the members' Code of Conduct and apparent pre-determination of applications. Parish rights and the effect of their perceived status have already been noted and this is where the risks crystallise. Other issues include lack of a training programme for members, and rates of overturned recommendations between committees.

## **Comparison of planning risk indicators**

- 76. The Audit Commission database gives information on 240 district and borough councils. The data set which authorities completed covers 1 April 1997 to 31 March 1999. Most authorities who participated in the study concluded their reports before the end of 2001, when the data was still reasonably relevant. Stratford is unusual in not starting its main study until 18 months after most others were completed, and therefore the 1999 data is not a good basis on which to draw comparisons with other authorities. We have attempted to draw some comparisons but also make allowances for the fact that other councils will have moved on significantly from the last reported position.
- 77. The database was designed to compare key indicators within Council groupings and also with original (District Audit) thresholds. These thresholds were developed following review of public interest reports and prosecutions related to breaches of probity. We have therefore obtained updated information on AC planning indicators for Stratford DC for the period 1 April 2001 to 31 March 2003, which was just before the start of fieldwork. The results have been compared with the last reported position in 1997/1999.
- **78.** The Council's planning risk profile **increased** between 1997/1999 and 2001/2003. The Council's attention is drawn to the following.
  - The number of applications referred to members has dropped by 108 or 13%, but overturns have increased in absolute terms by 22, which is a **rise of 23%** on 1997/1999 levels. This is more than would have been accounted for simply by the rise in application numbers.
  - Recommendations overturned by members increased to 17% of all applications referred to them in 2001/2003, compared to 12% in 1997/1999.
  - The percentage of recommendations overturned where officers recommended refusal **increased to 23**% of the overturns in 2001/2003, compared to 14.5% in 1997/1999.
  - The total number of appeals has risen from 154 in 1997/1999 to 254 in 2001/2003, which is an increase of 61%, and is more than would have been predicted by the rise in application numbers.
  - The percentage of appeals upheld has risen to 34.5%, compared to 27% in 1997/1999 and this brings the appeals success rate above the original DA danger threshold of 33%.
  - No data could be given on the number or value of planning obligations because the
    Council no longer has a dedicated member of staff to keep the records. In view of the
    high numbers of applications received and the greater likelihood that Stratford will obtain
    planning obligations, this should be considered as a high risk and should be included in
    future audit programmes.
- **79.** The information on these indicators is included where appropriate in the following sections of the report.

#### **Visual information**

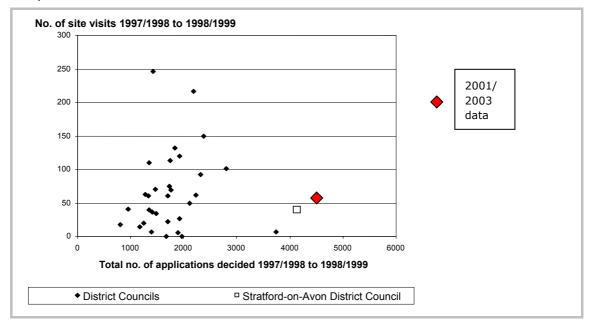
80. Visual information is limited to site plans (not elevations) only within the committee reports. Elevations are shown on overhead slides but are not always clear. This may contribute to members' difficulties sometimes in reaching a judgement on some of the finer points of design and character, where these have a principal bearing on the decision. The Council needs to consider how to improve the quality of visual information presented at committee, but also how to encourage members to view plans early. Some other authorities (such as Derbyshire Dales) have digital photographic systems which project photographs of every site referred to members. These are often a useful substitute for site visits. Many also include the most relevant elevations in the committee papers.

## **Training in planning**

- 81. The requirement for mandatory training introduced after the Brady report is not enforced. Currently 75% of members have not completed their quota of training (whether in full or pro-rata to the election date) and we have already noted that the constitution needs to be amended to allow this condition to be enforced. Planning is a highly complex, technical environment, and one which is about to change markedly. We have observed members making decisions which were questionable and attribute this partly to lack of training.
- 82. The Brady report recommended the Council should introduce a member training programme. This has not materialised. Training of members is intermittent and is not part of an overall training strategy which sets out core components which have to be covered in the mandatory 18 hours. Some members have been to inquiries and classed this as training. It might be useful experience, but no evaluation or monitoring is done by officers. As the Council has not set standards for what a well performing APC should look like, it also cannot state whether training or development activities are successful contributing to good performance.
- 83. Some new APC members have only received a brief planning induction since taking up their posts in May 2003. They have been poorly equipped to perform their role. Inexperienced and poorly trained members are more likely to be influenced by parish and public views at the expense of local plan policy.
- **84.** The Council needs to introduce a structured training programme for members as well as enforce the mandatory requirement it already has. This training should include a balance of the following which have been used elsewhere:
  - organised visits to review permissions granted, with evaluation and lessons learned presented as a paper
  - short (half day) sessions on special topics of interest or where overturns have indicated problems with planning policy
  - special topic groups to consider thorny issues in depth and report back to APCs
  - formal training by internal and external speakers
  - visits to other authorities who have received good inspection/audit feedback
  - quick presentations by officers to each APC on hot topics eg new legislation, white papers and their impacts followed by a brief question and answer session
  - attendance at inquiries where officers have identified there is something specific to learn which will benefit members.

#### **Site visits**

**85.** There is relatively limited use of official site visits and they are rarely used as an excuse to defer difficult applications. The last data set from 1997/1999 showed a low number compared to Midlands authorities.



**86.** Since the last data set, the number of site visits has increased slightly and this should be kept under review to make sure that inappropriate practices do not creep in.

Site visits	1997/1999	2001/2003
No of site visits	40	52
% of applications resulting in a site visit as a proportion of the total	0.96%	1.10%
% applications resulting in a site visit for member only applications	5.10%	7.60%

- 87. Members of APCs are usually familiar with sites which come before them. However, public and parish influence over the current decision-making system exposes members to significant risk of being lobbied when visiting sites alone. On a point of good practice, we identified one example where developers had repeatedly requested a meeting with leading members. Officers accompanied members and a detailed note was kept of the discussion which took place. This should be used as the standard for all similar situations.
- **88.** The working group consideration that ward members should not be allowed to vote on applications in their ward would reduce the risk of inappropriate lobbying, and allow continued low level usage of official site visits.
- 89. Unlike some other authorities, officers and members rarely suggest applications which might benefit from a site visit in advance of the meeting. In most other authorities, officers and members suggest site visits in advance and have the site visits on the day of the committee so that the case is fresh in their minds before they debate it. It is also common practice for all members to be 'bussed out' to sites from a suitable meeting point. This is more efficient than this Council's system where a large amount of debate may have ensued before a site visit is voted for.

- **90.** We have noted that the minutes do not record valid planning reasons for site visits to take place, and this would protect the Council in the event of appeals. However, our observation of committee meetings has confirmed that members do not often accept member recommendations for site visits, and the practice of voting on them gives robustness to the decision to hold a site visit.
- 91. Once a committee has voted to hold a site visit, attendance is poor. Site visits tend to be held in the morning and this affects the numbers which can participate. From a probity view, members who do not attend an officially organised visit are not party to all the facts before the committee. In some local authorities, those who do not attend an officially approved site visit are barred from voting (this was the practice in Amber Valley in 2000). This is the safest line to take, although not an easy option. Some authorities have resolved this by:
  - providing good quality digital photographs of all sites before their committee(s)
  - including a note in the planning code or site visit code which makes the presumption that members will attend a site visit, but allows them to vote if they have believe they have enough other information on which to make an informed judgement
  - ensuring that a detailed note is made of the site visit features and this is reported to the committee in the officer's introduction.
- **92.** The site visit protocol is now three years old and needs to be reviewed. Issues described above should be covered by the new protocol. In addition, the new protocol should consider the following which are missing from the current one:
  - advise for members on what to do if a third party approaches them immediately before, after or during a site visit
  - state in what circumstances, if any, it is permissible to have third parties at an official site visit, who these third parties are and the purpose of their attendance
  - the procedure to be adopted during the actual visit
  - the need to give planning reasons to the committee for holding a site visit.

#### **Public and parish influence on decisions**

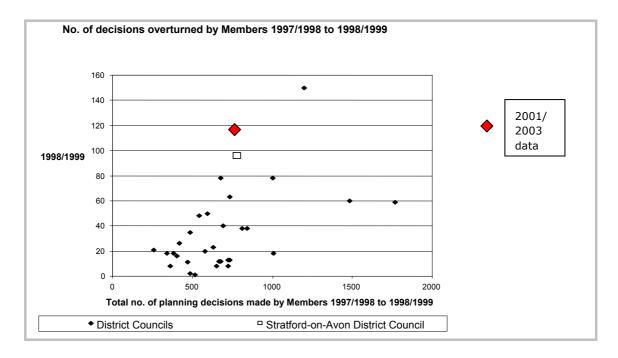
- **93**. The purpose of planning is to *regulate development in the public interest* (PPG1 paragraph 39). This means:
  - a balance between demand for development and protection of the environment
  - provision for necessary, sustainable development
  - development being assured as fit for purpose against criteria in the local development plan
  - in the interest of the area as a whole.

Base data	1997/1999	2001/2003	Analysis
Number of applications	4,133	4,724	+14%
Number of applications decided by members	781	678	-13%
Number of decisions overturned by members	96	118	+23%

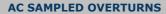
- 94. The Council has experienced strongly rising numbers of applications. The average District Council deals with 1,250 per year compared to Stratford's current 2,300 indicating the intense development pressure on the district. Officers manage very well with handling this level of applications and achieving almost 90% delegation. The Head of Regulatory Services own statistics on appeals (discussed later) indicated that the committee processes posed a higher risk than officer delegated decisions, and the focus on committee decisions was agreed on this basis.
- 95. The Council's own decision-making risk at committee has increased. The numbers of recommendations overturned by members has increased in absolute and percentage terms (23%) against a background of falling numbers of cases referred to committee. The percentage of overturns is still over the 2% upper (danger) threshold set originally by District Audit based on studies of public interest reports and prosecutions.

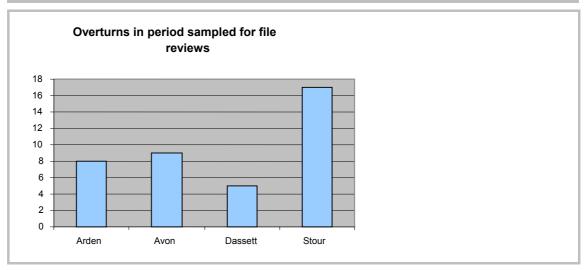
Decision-making framework	1997/1999	2001/2003
Decisions overturned by members (absolute)	96	118
Cases referred for member decision	781	678
Decisions overturned by Members as % of total applications	2.3%	2.50%
Decisions overturned as % of total applications decided by Members	12%	17%
% of overturned recommendations which were recommendations to refuse	14.5%	23%

- 96. The increase in overturns has been slightly more than would have been expected pro-rata to the increased numbers of all applications and accounted for 17% of all member decisions between 2001 and 2003. The percentage of overturned recommendations which officers said should be refused has also risen quite sharply. This indicates a higher risk to the decision-making process from member activities, particularly in respect of recommendations to refuse, as there is no right of appeal against a poor decision.
- **97.** The increase in overturns at Stratford makes the position look less favourable than in 1997/1999, especially as many authorities have done considerable work to improve their probity arrangements and their overturn rates may have decreased.



**98.** We also found wide differences between the numbers of overturns in the sampled period between APCs (below) and this is also referred to by officers in the inaugural working group report.



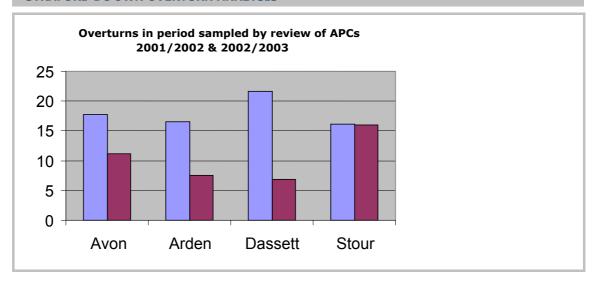


- 99. The Council's devolution to area committees and status conferred on parish councils have increased expectations that decisions will be made in accordance with local likes and dislikes. Public participation is valuable within the planning process, but it needs to be carefully managed and the public educated on what they can and cannot expect from the system.
- 100.Over time, members have become sensitive to public opinion and in some cases development plan policy is simply sidelined. Not only this, but the views of recognised and statutory consultees have also been overlooked. We reviewed 15 overturn case files. Our review showed the APC's decision was more likely to favour a strongly expressed public/parish and ward member view where there was a conflict with development plan policy.

Committee	Reviewed	Correlated with public/ward member opinion	Comment
Stour	6	5	
Dassett	4	4	One case now subject to appeal where all 5 statutory consultees had no objection subject to conditions.
Arden	2	2	One case later rejected on appeal by inspector as decision was 'insubstantiated supposition'.
Avon	3	3	One case rejected despite 4 statutory consultees raising no objections.

101. The Council's recent figures submitted to the working group on APCs shows a decrease in the number of overturns for Dasset, Avon and Arden committees in 2003. This is very encouraging and shows that work to improve aspects of the probity framework are starting to have an effect. Our attendance at committees revealed that a number of members are very careful to remind the committee that they should follow the local plan unless material considerations dictate otherwise. These members should be encouraged to continue under a revised APC system.

#### STRAFORD DC OWN OVERTURN ANALYSIS



- 102. However, the rate of overturns at Stour Committee has remained the same at 16% and the Stour committee Chairman is on record as stating that the purpose of APCs is to 'determine applications from a LOCAL point of view'. This is at odds with the legislative framework for the Town and Country planning system. The Acts and supporting PPG1 clearly indicate that a planning member's primary duty is to uphold the development plan. If the Chairman's alternative argument is the committee's understanding of its role, its decisions expose the Council to significant risk of increased appeals and costs.
- 103.In 1999, the Brady report highlighted the impact of public opinion and made recommendations for this to be dealt with. There is no evidence that these recommendations have been acted on in a concerted way. Our own recommendations on monitoring should begin to highlight and prompt action on these issues. Initially, Stour Committee should be the focus of efforts.

#### **Appeals**

104. There is an increased risk from appeals, based on the Council's own data (below).

Appeals indicators	1997/1999	2001/2003
Total number of appeals	154	249
% of total applications resulting in appeals	3.70%	5.20%
% of appeals upheld	26.60%	34.50%

105. The total number of appeals has increased markedly, by 61.7% and the percentage is not in proportion to the increased number of applications received. This indicates a need to investigate decision quality and 'customer perception' of fairness of the decisions made in recent times. The success rate with appeals has also increased and this has taken the Council over the original DA danger threshold. Based on the data from 1997/1999, the majority of councils maintain an appeals success rate at or below 33% lost. The Council needs to make sure the level does not continue to creep upwards using monitoring arrangements. We accept that member decisions are necessarily the more contentious cases, but a large discrepancy between success rates against member and officer decisions would also be cause for concern. We would recommend that this review needs to be part of any monitoring arrangements.

## **Apparent pre-determination and bias**

- 106. The planning system is based on the principle that members who determine applications come to the table with an open mind, ready to hear all the arguments. There is evidence that some members have become too close to certain applications, Parish or third party views and approached committee with a pre-determined view. Any decision made by a planning committee where one or more members have already demonstrated a closed mind, can be overturned on appeal or ruled unlawful under judicial review.
- **107.** There are several areas where we have evidence of members acting with an apparently closed mind.

#### **Comments on applications**

108. Members are invited to comment on applications in their ward. This facility is for members to express any material planning matters which they feel are important and to request referral to the APC if they feel it is appropriate. The auditor's review of cases where members overturned officer recommendation at committee demonstrated that members had unwittingly revealed a closed mind. Examples (not a complete list from the review) are given below.

#### **MEMBER COMMENTS ON APPLICATIONS**

- 'I totally disapprove of any demolition of properties especially in a conservation area'
- 'I object strongly to this application.....'
- 'As this is in an area that is not designated or recognised for guest house or bed and breakfast premises I would support this request'
- 109.Officers should have reminded members that these statements expressed a pre-determined point of view and therefore had fettered their discretion. These members were allowed to participate and vote at committee. In the event of an appeal, these statements might be enough for the committee's decision to be overturned.

#### At committee

**110**.At committee, the same difficulties occur. An example of where Parish involvement can lead to predetermination is given below.

#### **EXAMPLES - PARISH INFLUENCE**

- (1) The auditor attended a meeting of the Avon APC where an application for a new equestrian/race horse training centre was being considered. One of the members repeatedly referred to 'we don't like ....', qualifying this shortly afterwards by saying 'that is, me and the Parish Council...'. Discussion with the Parish Council had clearly produced an agreement that the parties were not in favour before the committee meeting.
- 111. Member's own preparations can be a source of evidence for predetermination. At one of the APC meetings we observed a member reading their statement from a pre-prepared script. This script covered the arguments the member wanted to advance in support of the application and was not a short aide-memoire of policy issues. Another example is given overleaf.

#### **EXAMPLE - PRE-PREPARED RESOLUTION**

An application came before an area committee in July 2003 covering a house in a conservation area. One of the members pre-prepared a list of policy issues relevant to the case. At the end of this list was the following statement (edited to remove the case specific information).

'The proposals create a visible extension that does not enhance the clean lines of (property name) built in 1850. It appears to have an overbearing effect on the neighbouring (property) also in the Conservation Area causing significant loss of amenity. The proposals affect the character of the Conservation Area by the visible bulk and style of the extensions'

There is conflicting evidence over whether the overhead transparency was displayed by the member at the APC meeting. However, the statement above was used verbatim in the decision notice to refuse planning permission.

- 112. The use of a note listing policy issues is not in itself a problem, and indicates a thorough level of preparation. However, the existence *in the same document* of a statement which a reasonable person would perceive as a pre-prepared reason for refusal, whether shown to the committee or not, could be used as evidence of the member's closed mind. The fact that this reason could also be used, *unaltered*, in the decision notice refusing permission adds weight to the perception that this was a pre-prepared reason for refusal.
- 113. This has parallels with the legal precedent set in the case of Bovis Homes vs New Forest District Council 2002. In this case, a Councillor came to the table with a copy of his pre-prepared papers which included reasons for refusal. Even if only one of the decision-makers has come to a predetermined view, the entire decision is flawed. In finding for the appellant, Bovis Homes, Mr Justice Ouseley's summing up included the following extracts.

#### **BOVIS HOMES VS NEW FOREST DISTRICT COUNCIL 2002**

'In my judgement a Council acts unlawfully where its decision-making body has pre-determined the outcome of a consideration which it is obliged to give to a matter.....Even if all the considerations have passed through a predetermined mind, the weighing and balancing of them will not have been undertaken in the manner required...'

'Examining the whole picture ....I am driven reluctantly to conclude that the matter was dealt with by the Council with a closed mind. Councillor Harrison had prepared the acetate resolution and had already made his mind up. Those factors also tell against the value of new members bringing a fresh mind to bear; and their adoption of that acetate reasoning unvaried after debate also undermines the...debate'

'I do not give weight to the assertions of open-mindedness...although not all Councillors may have been as closed-minded as Councillor Harrison, to regard Councillor Harrison as one who was open minded involves a very odd view of open-mindedness....'

- 114.In the Council's case, officers and members should report incidence of apparent pre-determination to the Monitoring Officer for investigation. If this does not happen, it weakens the effectiveness of the monitoring officer role. We would also have expected referral to the Standards Committee, with some consequences for the members involved. No action was taken.
- 115.Presently, our impression is that the organisation does not support officers or members who voice misgivings, or protect them sufficiently from recriminations if they try and improve probity. Members also need to be more pro-active in reporting cases to the Monitoring Officer where they believe the impartiality of the planning system is not respected.

## **Legal officer representation**

- 116. The Council is unusual in not having a legal officer at its planning committee meetings. This occurred in the move to four APCs, because of the time commitment required. However, in view of the issues arising since, legal presence is important. It would enable matters of predetermination and conduct to be addressed immediately and reported on to the Monitoring Officer.
- 117.Currently, the Council believes it is not effective to have legal representation at all planning committees. In view of the figures on overturned recommendations and issues relating to public influence, the Audit Commission disagrees. Costs of legal officer representation would be more manageable if the Council took the decision to move to fewer area committees. All other councils we have visited have had legal officer representation at planning committee meetings, including those with 2 area committees.
- 118.In many authorities, the Head of Regulatory Services or equivalent, and/or the Director attend meetings where contentious items are being discussed, to provide support for the Chairman and Legal Officer. It is our experience that this is helpful in maintaining balance within the proceedings. It is also our experience that the committee clerks are not sufficiently experienced or empowered by their position to substitute for the Director or Legal Officer and should not be asked to take this role.

#### Recommendations

R14 Enhance the visual information available for members at the committee and in their papers.

R15 Introduce a structured member training/development programme for Planning which:

- sets out core components which must be attended
- includes a balance of formal and informal training
- includes an evaluation of the quality and effectiveness of the training.

R16 Review systems and the local planning code to ensure that:

- all cases of apparent pre-determination are reported to the Monitoring Officer and Standards Committee
- there is demonstrable, documented, prompt and effective action
- mechanisms are introduced to support and protect officers or members reporting such cases.
- R17 Produce a new site visit protocol which takes on board the Working Group findings and the suggestions in this report, particularly over increasing attendance.
- R18 Review why the risk profile for decisions has increased, identify and report any significant differences between committees and between member and officer decisions.
- R19 Investigate customer perception on a representative sample of appeals to determine why the appeal was triggered and feed this into training programmes.
- R20 Ensure that screening of referrals to APCs identifies statements which give rise to fettered discretion and informs the members, in writing, of the outcomes of this.
- R21 Introduce legal officer representation at all APCs.
- R22 Take specific action regarding the apparently pre-determined application referred to in the report.

## **Code of Conduct**

## **Local planning Code**

- 119. The Council adopted a local Planning Code of Conduct in October 2003 to supplement the members' Code of Conduct introduced in May 2003. This is 2 3 years later than most local authorities. If the code had been introduced earlier and acted on, some of the issues we have described in this report may not have arisen.
- 120. We were unable to find any evidence in the Code or other documents of the processes or sanctions which will be applied to members who do not comply. Poor conduct must be dealt with promptly and effectively. We expect the Council to clearly set out in the Code what the processes are for reporting possible breaches, the likely sanctions there will be for non-compliance and who will administer them.
- **121.**Adoption of the Code needs to be supported by training, practical application by members and Monitoring Officer review. The whole authority needs to buy into the code if it is to work effectively.

#### **Member conduct**

122. In some cases, members do not value the support or advice they receive from officers. We observed one member undermining named officers in front of the committee and its public audience. We understand this is not the first time such behaviour has been shown by this and other members. This is unacceptable in a public forum and possibly breaches the members' general obligations under the national Code of Conduct Paragraph 2(b).

#### **NATIONAL CODE EXTRACT**

## Statutory Instrument (SI) 2001 No. 3575

#### The Local Authorities' (Model Code of Conduct) (England) Order 2001

- 1. (1) A member must observe the authority's code of conduct whenever he -
- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he has been elected or appointed; or
- (c) acts as a representative of the authority,
- 2. A member must -
- (b) treat others with respect...
- 123.In this case and the previous ones, no formal action has been taken against members involved. We would expect this to be referred for action to at least the Monitoring Officer and internal Standards Committee. Legal officer representation might avoid such situations occurring in the first place.

## **Declaring interests**

- **124.**We have noted already that members are sometimes unwittingly pre-determining applications and in these cases stronger advice is required so that they recognise the need to declare an interest.
- 125.In two cases we have reviewed, members became over-enthusiastic in their involvement. Members should be very mindful that excessive contact with applicants, objectors and reviewing past history of the cases at considerable length all raise questions about their impartiality, and give rise to suspicion that there is an interest to declare.
- 126. We also observed a member apparently failing to declare an interest when a reasonable person would have concluded that there was one. A similar circumstance had occurred at the previous committee and no interest was declared then either. The interest was unlikely to have been prejudicial therefore the member might still have exercised the right to vote. No action was taken by officers or the Chair to remind the member of their obligations either at the meeting or afterwards. Had a legal officer been present these issues could have been dealt with.
- 127. Declaring interest in a case should be seen as protection for members from unfair accusations, rather than a constraint on their actions, as in most circumstances the interest is unlikely to affect their right to speak and vote. However, where the rules are clearly being avoided, there must be mechanisms to hold members to account.

#### Recommendations

- R23 The Planning Code of Conduct should clearly state what sanctions there will be and who will administer them if members do not comply with the Code.
- R24 Implement systems to ensure that the delivery of Monitoring Officer functions is robust and provides sufficient incentive for improved conduct.

## **Committee and file records**

- 128.Officers deal with 87% of all applications which are submitted, or approximately 2,300 per year. This number is almost twice the average number of applications received by district councils across England. Officers do extremely well to handle this volume, while also trying to service 4 area committees. This is evidence of the good officers and hard work which they put into maintaining a quality service.
- 129. However, as a result of this workload, officers confirmed that they sometimes cannot meet their own quality standards. As part of the audit process, we undertook a review of 15 overturned files. This review was designed to test probity but also revealed that officers sometimes struggle to keep the files in good order. We found the following examples:
  - handwritten notes only of the site visits and 'who said what' at committee meetings,
     which would be difficult for anyone other than the case officer to interpret
  - internal constraints sheets not completed fully
  - reference made to statutory consultee comments in committee reports which could not be found on the file
  - a reference in a consultant's letter to officer comments, the details of which could not be found on file
  - general duplication of information on the files making it difficult to quickly obtain the salient information or follow the chronology of the case.
- 130. The impact of these is that the files are less robust as a defence against complaints or appeals, especially where site visits and committee discussions are involved. The committee minutes do not record details of the discussion surrounding the decision, or reasons for site visits. This places heavy reliance on the committee clerk and case officers' memories. When challenged, the officers may not be able to point easily to a good quality audit/evidence trail to satisfy planning inspectors. When staff leave, their notes cannot automatically be interpreted by their replacement and continuity is lost.
- 131.Committee papers are good. They are well written, with an excellent executive summary which we will recommend to others as best practice. The reports are also consistent between the committees. Our main concern is the different treatment of third party representations. Applicants' comments are reproduced extensively and often in full, but other parties' comments are summarised. This is giving inappropriate prominence to the applicant's case and could be used against the Council if another third party perceives themselves to be treated unfairly. All representations should be treated equally. We recommend summarising them all to keep the report length short.
- 132. Committee minutes are clearly laid out but are very concise. Committee clerks maintain their handwritten notes but the same issues arise in relation to these as to the officers' file notes. It is common practice in other authorities to include information such as:
  - the original recommendation and the final decision
  - voting numbers (for, against, abstentions)
  - material planning reasons for site visits.
- 133.Additionally, Derbyshire Dales include a summary of what each member says on each case, in sequence, a record of what members who declare an interest do afterwards (leave the room, speak, speak and vote), and a record of late arrivals and early leavers.

## **Planning obligations**

134.We did not seek to cover management of planning obligations within this audit. However, the comments on the Council's data return for 2001/2003 stated that no data could be given on planning obligations because there was no longer a dedicated member of staff to maintain the records. In view of the high numbers of applications received because Stratford is a desirable area, and the greater likelihood that Stratford will obtain planning obligations, this should be considered as a **high risk** and should be included in future audit programmes.

#### Recommendations

- R25 Update the Local Planning Code to take on board points raised by this report, particularly in respect of processes and sanctions to be applied for non-compliance.
- R26 Summarise all representations in the committee reports.
- R27 In respect of committee minutes:
  - note reasons for site visits in every case where one is agreed
  - review the minutes against the best practice checklist to and ensure they provide adequate defence of the Council's position.
- R28 Set standards for good case file housekeeping which adequately protects the Council's interests and randomly test that these are being delivered.