



SUPPLEMENTARY AGENDA 1

Dear Councillor

PLANNING AND LICENSING COMMITTEE - TUESDAY, 4TH SEPTEMBER, 2018

I am now able to enclose, for consideration at next Tuesday, 4th September, 2018 meeting of the Planning and Licensing Committee, the following reports that were unavailable when the agenda was printed.

Agenda No	Item
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| 6. | <u>Urgent Business</u> (Pages 3 - 18) |
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Yours sincerely

Head of Paid Service

Encs

4 September 2018

Planning and Licensing Committee

Adoption of Revised Members Planning Code of Good Practice into the Constitution

Report of: *Gina Clarke, Corporate Governance Lawyer*

Wards Affected: *All wards*

This report is: *Public*

1. Executive Summary

- 1.1 The purpose of this report is to seek the views of the Committee on the adoption by the Council of a revised and updated Members Planning Code of Good Practice for inclusion in the Constitution.
- 1.2 The Constitution Working Group has been working on changes to the Constitution since 2016, following a review of the Constitution being undertaken by external legal advisors, Bevan Brittan. One of the areas identified for further review was the Council's planning procedures to make sure that they comply with the current law, best practice in relation to the declaration of interests by Members, predetermination and bias and other wider planning considerations.
- 1.3 Following earlier consideration of the draft Members Planning Code of Good Practice by the Constitution Working Group, it has been substantially revised in the light of comments received. It has been shortened and made much clearer and up to date, both in style and in relation to revisions which are necessary since the passing of the Localism Act 2011, which changed the rules about the Code of Conduct and the types of interests that are now required to be disclosed.

2. Recommendation(s)

- 2.1 That the Planning and Licensing Committee note the report.**
- 2.2 Any comment on the revised Members Planning Code of Good Practice attached as Appendix A to this report be reported back to the next meeting of the Regulatory & Governance Committee by the Monitoring Officer.**

3. Introduction and Background

- 3.1 Section 9P of the Local Government Act 2000 requires the Council to prepare, keep up to date and publicise its Constitution.
- 3.2 The Council Constitution governs the way the Council operates and how decisions are made. Under the terms of the Council Constitution the Council is responsible for monitoring and reviewing the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect (Article 12.1(a) Duty to Monitor and Review the Constitution).
- 3.3 Subject to certain exceptions changes to the Constitution are only effective if approved by Full Council. Normally changes will only be considered by Full Council following a report and recommendation from the Constitution Working Group or the Regulatory Committee (“Member body”) and having received advice from the Monitoring Officer, (Article 12.1(c)). The Monitoring Officer may submit a report direct to Full Council in any case where his advice is not accepted by the Member body (Article 12.2(f)).
- 3.4 Planning is a complex area and given that Members have an essential role to play in the planning system, Members need to act reasonably and fairly in a way that ensures public confidence in the planning system. The revised Members Planning Code of Good Practice provides updated guidelines as to the standards of conduct expected of Members within a planning context, and to ensure that all planning decisions are made openly, impartially, with sound judgement and for justifiable planning reasons. The draft revised Members Planning Code of Good Practice (Appendix A) draws upon guidance issued by, amongst others, the Local Government Association, the Local Government Association, Royal Town Planning Institute.
- 3.5 The draft revised Members Planning Code of Good Practice was presented to the last meeting of the Constitution Working Group, on 2 February 2018. Members of the Working Group were asked to submit to the Monitoring Officer any further queries they may have on the draft Planning Code of Good Practice, then for this item to be brought back to the next suitable meeting. No further queries or comments from Members the Constitution Working Group have been received by the Monitoring Officer.
- 3.6 The Regulatory and Governance Committee was established by Annual Council on 16 May 2018. The remit of the Committee extends to maintaining a review of the Constitution. Therefore, changes to the Constitution can be considered by the Regulatory and Governance Committee or the Constitution Working Group prior to approval by Full Council.

4. The Draft Revised Members Planning Code of Good Practice

4.1 The main purpose of the Code is to: -

- To inform developers and members of the public of the standards agreed by the Council in the performance of its planning functions
- Protect the Council from criticism about the conduct of Members in the planning process
- Facilitate good decision making in the planning process which is in the public interest
- Ensure that there are no grounds for suggesting that a decision has been biased, partial or not well founded
- Provide a framework to deal with potential problems.
- Supplement the Members' Code of Conduct for the purposes of planning control

4.2 The adoption of, and compliance with the Members Planning Code of Good Practice may lead to:

- minimising the risk of successful legal challenges as to the legality of planning decisions
- minimising the risk of successful complaints to the Ombudsman of maladministration of related decisions
- reduce the risk of breach of the Code of Conduct for Members.

4.3 The Committee is requested to consider the appended document (Appendix A) for adoption by Council.

4.4 The revised Members Planning Code of Good Practice covers the following:

- (i) The aim and application of the Planning Code;
- (ii) The relationship with the Council's Members' Code of Conduct;
- (iv) Declaration of interests in planning matters;
- (v) Predisposition, predetermination and bias;
- (vi) Membership of other councils and bodies;
- (vii) Pre-application discussions;
- (viii) Contact with applicants, developers and objectors;

- (ix) Lobbying of and by councillors;
 - (x) Site visits
 - (xi) Officers;
 - (xii) Decision Making;
 - (xiii) Training and Review
- 4.5 Approval of the Members Planning Code of Good Practice by Full Council is anticipated at its meeting on 14 November 2018.
- 4.6 Training on the Code will be rolled out to all Members and incorporated into the Members induction training programme.

5. Issue, Options and Analysis of Options

- 5.1 The option of making no change to the existing Member Planning Code of Good Practice was not considered, since changes are required to comply with changes in the law, best practice and wider planning considerations.
- 5.2 It is important that the governance and processes of the Council comply with the law and are transparent and understood by Members and the public. The Council is required to keep its Constitution up to date. The revisions to the Members Planning Code of Good Practice ensures that the Council meets this requirement and minimises the risk planning decisions being successfully challenged in court, complaints of maladministration to the Ombudsman and Member conduct complaints.

6. Reasons for Recommendations

- 6.1 The Council needs to ensure that all planning decisions are made in an open, impartial manner, with sound judgement and justifiable reasons. To maintain public confidence in the planning system, it is proposed that the Council adopt a Members Planning Code of Good Practice (Appendix A) which provides best practice and guidance for Members in relation to their conduct in the way in which they participate in the planning process.
- 6.2 It would be prudent for the Council to formally adopt the new Members Planning Code of Good Practice at its meeting on 4 November 2018. This would provide Members who serve on Planning & Licensing Committee, or otherwise become involved in making a planning application with clarity and guidance about the essential ethical approach to Council business.
- 6.3 The adoption of the Code will assist Members when determining planning applications, some of which may be perceived to be controversial or a risk of conflict could arise. When a planning decision is challenged it can be very useful for the

Council to be able to refer to the principles set out in the Code, which Members have been trained on and observed by them during the planning process. If the Council does not have a Code it is much more difficult to establish that members were properly aware of the way in which planning decisions should be made and of their role in the process; with the principles of good decision making set out and understood by Members, following training.

7. Consultation

- 7.1 The Constitution Working Group was consulted on the proposed changes to the revised Members Planning Code of General Practice attached as Appendix A to this report.

8. Reference to Corporate Plan

- 8.1 The Constitution sets out how the Council operates, and how decisions are made to achieve the Council's strategic outcomes.

9. Implications

Financial Implications

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- 9.1 There are no direct financial implications included in this report. Having a Member Planning Code of Good Practice, ensures the Council is following due process and acting efficiently, minimising the risk of successful legal challenges or complaints, which could financial pressures.

Legal Implications

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- 9.2 Legal comments are set out in the main body of the report where appropriate.
- 9.3 Under section 5 of the Local Government and Housing Act 1989 as amended, the Monitoring Officer is responsible for the operation of the Council's Constitution. This includes monitoring and reviewing the operation of the Constitution to ensure that its aims and principles are given full effect and matters of interpretation of the Constitution as necessary.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

8.4 None.

9. Background Papers (include their location and identify whether any are exempt or protected by copyright)

9.1 None.

10. Appendices to this report

Appendix A – Revised Members of Code of Good Practice

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Appendix A

PART 5.2 - MEMBERS' PLANNING CODE OF GOOD PRACTICE

1. INTRODUCTION

- 1.1 The basis of the planning system is the consideration of private proposals against wider public interests. The key purpose of the planning system is to control development in the public interest.
- 1.2 The aim of this Code of Good Practice is to facilitate good decision making in the planning process and ensure that there are no grounds for suggesting that a decision has been biased, partial or not well founded.
- 1.3 Your role as a Member of the Local Planning Authority is to make planning decisions openly, impartially, with sound judgement and for justifiable planning reasons.
- 1.4 This Code of Good Practice applies to Members at all times when they are involved in the planning process. This includes when taking part in Planning Committee meetings or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It also applies to planning enforcement matters or site specific policy issues.
- 1.5 This Code is drafted in terms of what you should do and what you should not do. If you have any doubts about the application of this Code to your own circumstances you should try to seek advice early, from the Monitoring Officer or one of the legal team, and preferably well before any meeting takes place. However, it is better to seek advice late in the day than not at all.

2. RELATIONSHIP TO THE MEMBERS' CODE OF CONDUCT

- 2.1 First, apply the Rules in the Members' Code of Conduct. These must be always be complied with.
- 2.2 Then apply the Rules in this Planning Code of Good Practice, which seek to explain and supplement the Members' Code of Conduct for the purposes of planning control. If you do not abide by this Code of Good Practice, you may put:
 - 2.2.1 the Council at risk of proceedings on the legality or maladministration of the related decision;

- 2.2.2 yourself at risk of either being named in a report made to the Audit and Scrutiny Committee or Council or, if the failure is also likely to be a breach of the Code of Conduct, a complaint being made to the Monitoring Officer;
- 2.2.3 yourself at potential financial risk if the council suffers a challenge due to your non observance of these Rules; and
- 2.2.4 if the non-observance involves a breach of the Disclosable Pecuniary Interest Regulations, you could be prosecuted.

3. WHERE YOU HAVE AN INTEREST IN A PLANNING MATTER

- 3.1 An interest could arise if it is your own application or the application of a family member; a close friend or associate of yours; or that of a company or organisation with which you are closely involved. In some situations your interest could amount to a Disclosable Pecuniary Interest; in other cases it may be one where you could reasonably be said to be at risk of bias (see below).
- 3.2 Whilst you are able to discuss your application with officers in advance of committee in the same way that a member of the public can, you should disclose the existence and nature of your interest at all relevant meetings, including informal meetings or discussions with officers and other Members. Your interest should be disclosed at the beginning of the meeting and not just at the commencement of discussion on that particular matter, unless you do not realise that you have an interest beforehand.
- 3.3 Where your interest is a disclosable pecuniary interest:
 - 3.3.1 unless you have been granted a dispensation beforehand, don't participate, or give the appearance of trying to participate, in the making of any decision on the matter by the Planning Authority;
 - 3.3.2 don't try to represent ward views, get another Ward Member to do so instead;
 - 3.3.3 don't get involved in the processing of the application; and
 - 3.3.4 never seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include,

where you have a disclosable pecuniary interest in a proposal, using your position to discuss that proposal with officers or Members when other members of the public would not have the same opportunity to do so.

3.4 When you have an interest, you should notify the Monitoring Officer in writing of the existence and nature of your interest and note that:

3.4.1 this notification should be sent no later than submission of the application where possible;

3.4.2 the application will always be reported to the Committee for decision and not dealt with by officers under delegated powers; and

3.4.3 it is advisable that you employ an agent (either a planning consultant if one is involved or another person) to act on your behalf on the application to deal with officers and to carry out any public speaking at Committee.

3.5 Whilst you are not prevented from seeking to explain and justify an application in which you have a disclosable pecuniary interest to an appropriate officer the Code places limitations on you in representing that application. You may address the Committee after being granted a dispensation but only to make a presentation in the same manner than would apply to a normal member of the public, after which you must leave the room- including the public gallery- whilst the meeting considers it.

4. PREDETERMINATION, PREDISPOSITION AND BIAS

4.1 Bias (or apparent bias which is more usual) is where your interests are such that a member of the public might reasonably think that these will affect your view of the public interest – so for example where a planning application in front of the committee is from a family member or close associate of yours. Predetermination is a form of bias. Whilst you are able to express a view (predisposition), you should not make up your mind, or appear to have made up your mind (predetermination) on how you will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning committee and after hearing the officer's presentation and evidence and arguments on both sides.

- 4.2 Do not speak and vote on any proposal where you are pre-determined. You do not have to withdraw, but you may prefer to do so. Where you are predetermined but take part in a decision you will put the Council at risk of a finding of maladministration and also of a risk of legal challenge on the grounds of there being a danger of bias or pre-determination or a failure to take into account all relevant factors. In some circumstances you may yourself face a claim if your behaviour led to the challenge.
- 4.3 Where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal, you are likely to be seen as predetermined. (This involves more than a matter of Membership of both the proposing and Planning Committees, but is where through a significant personal involvement in preparing or advocating the proposal you will be, or may be perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits.)
- 4.4 You are able to take part in the debate on a proposal when acting as part of a consultee body (where you are also a member of the Parish Council, for example, or are both a Borough and County Councillor), provided:
- 4.4.1 the proposal does not substantially effect the well-being or financial standing of the consultee body;
- 4.4.2 you make it clear to the consultee body that:
- (a) your views are expressed on the limited information before you at that point;
 - (b) you are clear that you are reserving judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, until it comes before the Committee and you hear all of the relevant information; and
 - (c) you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Committee; and
 - (d) you disclose the personal interest regarding your Membership or role when the Committee comes to considers the proposal.

- 4.5 If you are unable to comply with 4.4 above but are present at the Planning Committee you should explain to the Committee that you do not intend to speak and vote because you have or you could reasonably be perceived as having judged the matter elsewhere, so that this may be recorded in the minutes.
- 4.6 You may exercise separate speaking rights as a Ward/Local Member (this is granted by the Procedure Rules via the consent of the Chair) where you have represented your views or those of local electors in a way which could be said to make you pre-determined (not pre-disposed), but only where you do not have a disclosable pecuniary interest.
- 4.7 Where you wish to speak in these circumstances:
 - 4.7.1 advise the Monitoring Officer or Chair that you wish to speak in this capacity before commencement of the item;
 - 4.7.2 remove yourself from the Member seating area for the duration of the item;
 - 4.7.3 ensure that your actions are recorded and that if required you have been granted a dispensation to speak in accordance with the Members' Code of Conduct; and
 - 4.7.4 do not vote on the matter.

5. CONTACT WITH APPLICANTS, DEVELOPERS AND OBJECTORS

- 5.1 Refer those who approach you for planning, procedural or technical advice to officers.
- 5.2 Report to the Planning Officer or Monitoring Officer any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.
- 5.3 Don't agree to any meeting with applicants, agents, developers or groups of objector, but speak to the Planning Officer where you feel that a formal meeting would be useful in clarifying the issues, and ask the Planning Officer to organise it and be present. The Officer will then ensure that those present at the meeting are advised from the start that the discussions will not bind the authority to any particular course of action, that the meeting is properly recorded on the

application file and the record of the meeting is disclosed when the application is considered by the Committee.

5.4 Otherwise:

5.4.1 follow the Rules on lobbying (see Paragraph 7 below); and

5.4.2 consider whether or not it would be prudent in the circumstances to make notes when contacted (it usually is).

5.5 Don't attend a planning presentation unless an officer is present and/or it has been organised by officers.

5.6 Ask relevant questions at any presentation for the purposes of clarifying your understanding of the proposals.

5.7 Remember that the presentation is not part of the formal process of debate and determination of any subsequent application,

5.8 Be aware that a presentation is a form of lobbying and so you must not express any strong view or state how you or other Members might vote as this could be classed as predetermination.

6. LOBBYING OF COUNCILLORS

6.1 Remember that your overriding duty is to the whole community not just to the people in your ward and you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

6.2 Explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, you cannot express an intention to vote one way or another or express such a firm point of view that it amounts to the same thing.

6.3 Do not accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum and that its acceptance is promptly registered in accordance with the rules on gifts and hospitality. You may also want to consider reporting offers of gifts and hospitality which are made to you which you refuse.

6.4 Pass on any lobbying correspondence you receive to the Monitoring Officer at the earliest opportunity, and inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches.

- 6.5 Inform the Planning Officer of any offers made to you of planning gain or constraint of development, through a proposed s.106 Planning Obligation or otherwise.
- 6.6 Unless you have a disclosable pecuniary interest, you will not have predetermined or breached this Planning Code of Good Practice through:
 - 6.6.1 listening or receiving viewpoints from residents or other interested parties;
 - 6.6.2 making comments on proposals to residents, interested parties, other Members or appropriate officers, provided they do not amount to predetermining the issue and you make clear you are keeping an open mind;
 - 6.6.3 seeking information through appropriate channels such as the Planning Officers; and
 - 6.6.4 being a vehicle for the expression of opinion or speaking at the meeting as a Ward Member, provided you explain your actions at the start of the meeting or item and make it clear that you are expressing the opinion or ward/local view, but you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate.

7. LOBBYING BY COUNCILLORS

- 7.1 Be careful of joining or representing an organisation whose primary purpose is to lobby to promote or oppose particular planning proposals. If you do, you will probably be unable to vote on the matter due to predetermination or bias, and you may have an interest which should be declared under the Code of Conduct.
- 7.2 This does not apply to general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society. Where you are a member of such a group you should disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal

- 7.3 Do not excessively lobby fellow Councillors or attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.
- 7.4 Do not decide or discuss how to vote on any planning application at a political group meeting, or lobby any other Member to do so. Political group meetings should never dictate how Members should vote on a planning issue as these are decided upon material planning considerations.

8. SITE VISITS

- 8.1 Site visits are an opportunity to seek information and to observe the site.
- 8.2 Do not request a site visit unless you feel it is strictly necessary because:
 - 8.2.1 particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection (increasingly unlikely given the technology now available); or
 - 8.2.2 there are significant policy or precedent implications and specific site factors which need to be carefully addressed.
- 8.3 Try to attend site visits organised by the Council where possible. All information gained from the site visit is reported back to the Committee, so that all Members making the decision have the same information.
- 8.4 Whilst you should ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection, you should not listen to representations from any party, with the exception of the Ward Member(s), whose address must focus only on site factors and site issues. If you are approached by the applicant or a third party on a site visit, advise them that they should make representations in writing to the authority and direct them to or inform the officer present.
- 8.5 Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias.

9. OFFICERS

- 9.1 Don't put pressure on officers to put forward a particular recommendation. (This does not prevent you from asking questions or submitting views to the Development Management Manager, which may be incorporated into any Committee report).
- 9.2 Only discuss proposals, outside of any arranged meeting, with those officers who are authorised by their Head of Service to deal with the proposal at a Member level.
- 9.3 Remember that officers must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily so far as Planning Officers are concerned with the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. DECISION MAKING

- 10.1 Decisions must be made in accordance with the Development Plan unless material considerations indicate otherwise. The Planning Officers report will indicate what the material planning considerations are and it is only these factors that you must consider when deciding on an application.
- 10.2 If you request a proposal to go before the Committee rather than be determined through officer delegation, your reasons will be recorded and repeated in the report to the Committee.
- 10.3 If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request that further information. If necessary, defer or refuse.
- 10.4 Don't vote or take part in the meeting's discussion on a proposal unless you have been present to hear the entire debate, including the officers' introduction to the matter.
- 10.5 If you are proposing, seconding or supporting a decision contrary to officer recommendations or the Development Plan you must clearly identify your

reasons for doing so and understand the material planning considerations that justify this. These reasons must be given prior to the vote and will be recorded. If officers advise you that any reasons that are being put forward are not material planning considerations it is very difficult to justify any decision based on them, and it could give rise to the Council being challenged. You may be called to justify a decision against officer recommendation through giving evidence in the event of a challenge to them.

11. TRAINING AND REVIEW

- 11.1 You must attend the mandatory planning training prescribed by the Council before you participate in the planning committee meetings.
- 11.2 Try to attend any other specialised training sessions provided, since these will be designed to extend your knowledge of planning law, regulations, procedures, Codes of Practice and the Development Plan and so will assist you in carrying out your role properly and effectively.