

11 July 2018
Regulatory and Governance Committee

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

Report of: *Gina Clarke, Corporate Governance Lawyer*

Wards Affected: *All*

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. Further, the Committee is asked to recommend that Full Council resolve to adopt the revised Planning Code of General Good Practice.
- 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 Regulatory and Governance Committee considers the revised Members Planning Code of Good Practice.
- 2.2 That the Planning Committee is asked to comment on the revised Members Planning Code of Good Practice:
 - (i) any comments made by the Planning Committee be reported back to the Constitution Working Group before going to next meeting of the Regulatory Committee;
 - (ii) if no comments are made by the Planning Committee, it is recommended to Full Council to adopt the revised Members Planning Code of Good Practice. attached as Appendix A to this report, for inclusion in the Council Constitution at its meeting on 12 September 2018.

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, as referred to in paragraph 3.3 above.

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 12 September 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 12 September 2018. This would provide Members who serve on Planning 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.

Legal Implications

Name & Title: Daniel Toohey, Monitoring Officer and Head of Legal Services

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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

- 9.4 None.

10. Background Papers

- 10.1 None.

11. Appendices to this report

Appendix A – Revised Members Code of Good Practice

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