

MEMBER CONDUCT COMMITTEE – 4TH DECEMBER 2017

Report of the Monitoring Officer

Part A

ITEM 6 REVIEW OF THE PLANNING CODE OF GOOD PRACTICE

Purpose of Report

To provide the Committee with an opportunity to review the Planning Code of Good Practice.

Recommendation

That the Committee considers the officer responses and that the Monitoring Officer be asked to make amendments to paragraph 7.1 of the Planning Code of Good Practice as part of the Constitutional Review

Reason

To clarify the different requirements for all councillors and members of Plans Committee in their roles...

Policy Justification and Previous Decisions

The functions and responsibilities of the Committee set out in the Council's Constitution include monitoring the operation of, and advising the Council on, the adoption or revision of codes and protocols relating to standards issues which included the Planning Code of Good Practice.

Implementation Timetable including Future Decisions

The Council reviews the Constitution each year. As part of the review consultation is undertaken with officers, the Chair of the Plans Committee and councillors regarding the Planning Code of Good Practice. It is planned to submit the results of the Constitutional review to the Cabinet on 15th February 2018 and Council on 26th February 2018. At its meeting on 11th September 2017, the Committee agreed to consider the Planning Code of Good Practice for amendments and to invite the Head of Planning and Regeneration and the Chair of Plans Committee to the next meeting of the Member Conduct Committee (4th December 2017) .

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this decision.

Background Papers: None

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Background

At the meeting of the Committee held on 11th September 2017, the Committee resolved to consider possible amendments to the Planning Code of Good Practice and the Members' Code of Conduct that it may wish to recommend as part of the annual Constitution review process. To enable a suitable consideration of the item, areas for discussion were to be defined by Members of the Committee prior to the next meeting scheduled to be held on 4th December 2017, and the Chair of Plans Committee and Head of Planning and Regeneration be invited to attend the meeting.

Members of the Committee were asked to provide suggestions within a timeframe to allow for the information to be distributed to the Chair and Vice-chair of the Plans Committee and the Head of Planning and Regeneration for consideration. In addition, at the liaison meeting of Parish and Town Council clerks (held on 24th October 2017), clerks raised one further concern relating to Plans Committee procedures in the Council's constitution that they wished to be considered along with the issues raised by members of the Committee. A Councillor has also submitted a query relating to the Planning Code of Good Practice that has been included here.

Suggestions relating to the Planning Code of Good Practice

A. The Role of Ward Members

(Application: All Councillors)

- 7.1 When determining planning matters your duty is to the whole community not just to the people in your Ward area. You must ensure that decisions are impartial and you should not improperly favour, or appear to improperly favour, any person, company, group or locality, including the residents of your Ward.**
- 7.2 Councillors who are not members of the Plans Committee may exercise their separate speaking rights as a Ward Member set out in Other Committee Procedure 12.12. However if you have a disclosable pecuniary interest or an interest leading to bias you will not be able to do this even under paragraphs 4.3 and 4.14 of the Members' Code of Conduct. If you do exercise speaking rights:**
- advise the Head of Planning and Regeneration that you wish to speak in this capacity at least 24 hours before the meeting;**
 - you will not be able to vote on the matter;**
 - you should seat yourself in the place allocated to those addressing the Plans Committee;**
 - at or immediately prior to the meeting you should not circulate written information to the Committee.**

Request by Councillor:

Apparently representing residents in the capacity of planning could result in a member being subject to member conduct proceedings. The majority of our work is representing our residents. So this seems wrong and juxtapose to how we as councillors are expected to conduct the lions share of the rest of our casework workload. Within 7.1, it's a contradiction in terms. As a member of planning committee you have to be and stay impartial until you hear the arguments as it may impact your vote. As a ward representative to plans committee you get no vote. You're there to represent your ward, and by proxy, essentially, views raised to you. As a ward member you don't have a vote, you're not therefore 'determining a planning matter', you're not therefore subject to impartiality. The whole ruling seems to contradict the capacity it refers to. It may be relevant for planning committee members, but seems irrelevant, and damaging to the feedback process, to enforce that upon ward representatives to plans committee.

Officer Response:

It is accepted that paragraph 7.1 is unclear. Section 7 applies to all councillors and paragraph 7.1 seeks ensure that there are no improper relationships and that councillors do not or do not appear to improperly favour any person, company, group or locality, including the residents of their Ward. In also referring to determining applications and decisions the paragraph groups this with roles that are specific to members of the Plans Committee. It would be clearer if the Code was amended to reflect the distinction between the general advice to all ward councillors and the role of members of the Plans Committee.

B. Point 8.1 – “If you are contacted by applicants, developers or objectors:

- **refer those who approach you for planning, procedural or technical advice to officers;**
- **report in writing any contact with the applicant, objectors and other parties to the Head of Planning and Regeneration and request that it is recorded on the planning file”.**

Request by Councillor:

Is it advisable for all Councillors, whether on the Plans Committee or not, not to enter into a conversation with an applicant or a meeting without having an officer present rather than just being for members of the Plans Committee.

Officer Response:

Ward councillors are encouraged to engage with planning matters to represent the interests of their communities within the framework of the Code. There is no need to amend the Code.

- C. Point 1.3 – “Councillors are encouraged to speak to officers about planning matters and to suggest how development proposals could be improved. The Planning Code and the protocol on presentations to councillors provides a framework in which positive engagement by councillors in the planning process can take place”.**

Request by Councillor:

Can this be worded a bit more strongly as I very rarely get any feedback from Officers once I have called in a planning application and sometimes feel that officers think I am criticizing them rather than the application.

Officer Response:

Paragraph 1.3 is the pre-amble to the Code and deals with the conduct of members in the planning process. There are other documents more relevant to the councillor's request that deal with the mechanics of how councillors and officers work together including the 'call in' and 'pre-application advice' protocols.

Suggestions relating to the Plans Committee procedures in the Council's Constitution

- A. Point 12.12 Plans Committee procedures – (b) public speaking rights**

“The Chair of Plans Committee may ask speakers or officers to provide clarification on any points that are raised by speakers”.

Request by Parish Clerks:

Whether Plans Committee members be allowed to ask questions of the speakers on points of clarity.

“Last year when Head of Service came to talk to the MCC it was discussed that members could ask speakers to clarify certain points they were making. After lengthy discussions it was decided that if all members needed to ask questions then the Planning meeting would drag on too long. I cannot remember if a decision was reached at that meeting to add a change to the Constitution in favour of only the Chair being able to ask questions of the speakers. I am in favour of this but I would like to see the amendment changed so that the Deputy Chair can also ask questions”

Please note this has been discussed at Full Council – see 29 February 2016 item 8.5, and 27 February 2017 item 6.3.

Officer Response:

Proposals that members of the Plans Committee should be able to ask questions of speakers following their speeches has been previously reported to Council in February 2017 (minute 77.3 16/17 refers). Council were not persuaded to provide an opportunity for members to ask speakers questions on that occasion.

Such a procedure would have the advantage of enabling members of the Committee to clarify points of fact. However it has been concluded that these are outweighed by the disadvantages that it would extend the length of meetings and could be abused.

In addition the Constitution already includes a provision for the Chair of the Plans Committee to ask speakers or officers to provide clarification on any points that are raised by speakers.

It is considered the existing arrangements provide a robust and fair means of ensuring that people with a range of interests in an application can present their views to the Plans Committee meeting in an effective and efficient manner and no further changes are required.

B. Point 12.12 Plans Committee procedures – (c) call-in planning applications

“The right to call-in the application applies only to those ward councillors where the application site is wholly or partly within the boundary of their ward. Those ward councillors can request that an application is called-in to the Plans Committee which would otherwise have been determined by the Head of Planning and Regeneration under delegated authority.

To be valid a call-in request must be received in writing (which can include by email) giving a relevant planning reason or reasons no later than 5pm, 21 calendar days from the date of the consultation being sent to the ward councillors or the expiration of the initial local consultation on an application, including site notification and/or newspaper publicity, whichever is later. Applications that are the subject of a valid request will be added to the agenda of the next reasonably available meeting of the Plans Committee for determination.

After an application has been called-in, unless a written request to withdraw it is submitted by the ward councillor, the application will be referred to the Plans Committee for determination.”

Request by Councillor:

Apparently the final say on whether a call in to committee by ward councillor is upheld and discussed by committee, is made by an officer and not an elected official. I feel to be democratic, this should be made by an elected representative. Perhaps that would naturally fit with chair of plans committee, or respective cabinet lead member.

Please note this has been discussed at Full Council – see 27th June 2016 item 6.1

Officer Response:

The current process was agreed at Full Council on 27th June 2016 following extensive debate at a Planning Training event on 23rd November 2015 and consultation with members for three weeks between December 2015 and January 2016. The outcome of that exercise was that the wording of the call in rules should be amended to remove reference to the Head of Planning and Regeneration having ultimate sanction and stressing the requirement for relevant planning reasons to be given in all cases. It is not considered that there is a need for a referral to an elected official given these provisions nor is it realistic that an elected official could cope with the volume of call in requests that would otherwise result.