



Purpose: For Decision

Committee report

Committee	PLANNING COMMITTEE
Date	TUESDAY 25 JANUARY 2022
Title	REVIEW OF THE CODE OF PRACTICE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS
Report of	CHAIRMAN AND VICE CHAIRMAN OF THE PLANNING COMMITTEE

EXECUTIVE SUMMARY

1. Some Members of the Planning Committee have expressed discontent that the current Code of Practice for Members and Officers Dealing with Planning Matters does not provide the depth of information needed to help guide their approach to the consideration of planning applications.
2. The code of practice is the council's interpretation of the many laws that impact on how it must consider planning applications. It requires collective agreement to abide by the code of practice as set out or else a separate ruling on the law each time there is a departure from its provisions, which in turn sets a precedent for future action.
3. Therefore, it is proposed the Code of Practice for Members and Officers Dealing with Planning Matters is reviewed in general but especially in those areas of identified concern to councillors. This is intended to provide a revised code of practice which all councillors can collectively agree to follow.
4. A review of the code of practice is different to a review of the planning service as a whole. As set out in the corporate plan this is intended to be achieved by a peer review led by the Local Government Association to help the council identify its future needs of the service and that it has sufficient resources in place to meet these needs.

RECOMMENDATION

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| <ol style="list-style-type: none">5. On the basis of the information in this report it is recommended that the Planning Committee agrees to options ii, iii and iv:<ol style="list-style-type: none">ii. Ask officers to produce an amended Code of Practice for Members and Officers Dealing with Planning Matters for review by the Planning Committee, taking into account the need to achieve greater clarity about attendance at site visits, when |
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ward members can speak and achieving equality of voting rights for all councillors on ward matters.

- iii. Once agreed an amended Code of Practice for Members and Officers Dealing with Planning Matters will be recommended for adoption by Full Council at the earliest opportunity.
- iv. Recognise the corporate intention to undertake a peer review of the planning service and agree the committee should have a role, alongside the Cabinet Member for Planning and Community Engagement in agreeing the scope of and contributing to the review itself.

BACKGROUND

6. The systems and processes for the management and efficient operation of the Planning Committee are governed by the Code of Practice for Members and Officers Dealing with Planning Matters, which forms part of the council's overall constitution. The code of practice has been in place for a number of years and was last reviewed in 2017.
7. The introduction to the code of practice provides that it, "sets out guidance for all elected councillors in various roles, including as councillor and as a member of the planning committee". However, its standing has been tested in recent months as greater clarification has been sought to whether this 'guidance' needs to be followed to the letter or whether there is room to 'stretch' the boundaries in certain circumstances.
8. Ultimately in such cases where there are doubts about the application or interpretation of the constitution then the first place to refer is the law. The constitution must follow the law and, provided that it does, then councillors can agree an interpretation which they are all content to follow, such as in a code of practice. However, if councillors become discontent and depart from supporting the code of practice then the absolute determinant of any action taken or proposed will be the law.
9. The code of practice should not be read in isolation from the rest of the constitution and includes a number of cross references to other issues such as the Member of Code of Conduct and the Protocol for Member/Officer Relations and so cannot be taken as the only document to govern the operation and work of the Planning Committee, although in reality this is most likely to be the case.
10. Recent clarifications of the code of practice have been requested in a number of areas and external legal advice has been taken in order to clarify the position:
Mandatory attendance at site visits in order participate and vote on an application
11. The current code of practice sets out that, "Members of Planning Committee must attend official site visits in order to participate in the debate and vote". Whilst this has always been accepted by and the custom and practice of Planning Committee members for many years, it is not the definitive position.
12. Non- attendance at a site visit should itself not automatically mean that a Councillor should not take part in a debate and vote on a particular application. However, the councillor must be able to demonstrate that they have sufficient appropriate information to come to a reasonable and balanced view on a particular issue.

13. It would be very hard for someone to argue against the decision of the Planning Committee on the grounds that the members of the committee had insufficient information to make its decision in circumstances where all of the decision makers had attended a site visit. This is clearly the intent of the code of practice, strengthening the council's position to defend its decisions without the need for councillors to have to demonstrate independently, perhaps in judicial review proceedings, how they were sufficiently knowledgeable about an application to come to the judgement made.

The scope for a ward member to speak and vote on an application within their ward.

14. The issue of whether a councillor has a closed or open mind to a particular decision and their degree of 'influence' over current and potential decisions of the committee is of particular relevance in this regard. The council's custom and practice has been to allow ward members to speak on a particular issue. However, their ability to do so relies on their having not closed their mind to the application (pre-determined). There is a high bar to a councillor being judged to have predetermined a matter as the law does not require a councillor to have an empty mind to an application and having a predisposition is not objectionable in law. It is therefore suggested that the tests are made clearer in the code of practice, for the benefit of councillors and members of the public seeking representation from their ward councillor. All planning decisions must still be made on the basis of material planning considerations.

15. There also appears to be an assumption that it is for council staff to make the final decision as to whether a councillor can take part in the decision making of a planning application. This is not the case, as the code of practice and the law set out that ultimately it is for individual councillors to make their own decisions about what they do – in the full knowledge of the risks that they bring to the council and or themselves, having had the benefit of advice from council officers, most particularly the Monitoring Officer.

16. Council staff will be concerned with protecting the council's position against a challenge to a decision as the body corporate in advising any councillor about their own personal circumstances but can also advise on the likely personal risk to a councillor in taking a particular course of action. However, it is clear that it is for the individual councillor to take that advice and make their own decision in the full understanding of the consequences; this should be better set out in the code of practice to help in this process.

17. The code of practice also includes a convention that members of the Planning Committee can speak but will not vote on planning applications from their own wards. This has again been the custom and practice of the Planning Committee for many years and was included on the basis that not all members of the council can be a member of the Planning committee and therefore have the equality of opportunity to vote on issues relevant to the communities which elect them.

18. However, there is no legal requirement for this convention and if members of the Planning Committee are minded to not follow the convention the council may wish to investigate options for all ward members to be involved in deciding any application from in their ward. For example (if possible), extending the membership of the committee to include the ward member where they are not already a member of the committee, provided that they have received the appropriate level of training in planning matters to be able to participate in the committee meeting.

19. Aside from concerns with the application of the code of practice for dealing with planning applications some members of the Planning committee have also expressed concerns about the council's wider policy framework under which applications are made and considered. This framework is currently being reviewed as part of the production of a new local plan (the Island Planning Strategy) which was widely consulted on before Christmas and is due for submission to the Planning Inspectorate in July 2022 and adoption by September 2023.
20. The council will want to be in the best possible position to make full use of the new Island Planning Strategy to deliver developments the Island needs and wants and so is arranging a peer review of the planning service, as set out in the recently approved corporate plan. This will aim to identify what the service needs to deliver this aspiration taking into account the views of councillors, especially those of the Planning Committee, and wider stakeholders. The peer review will be undertaken by the Local Government Association as part of its programme of support for improving the work of local authorities and should be completed in April depending on the availability of the peer review team.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

21. Work to improve the Code of Practice for Members and Officers Dealing with Planning Matters and the planned peer review of the planning service will contribute to the corporate activity to, "review, enhance and improve our planning department to improve outcomes and adherence to statutory obligations".

CONSULTATION

22. This report has been prepared following consultation between the Chairman and Vice Chairman of the Planning Committee and their conversations with individual members of the committee. It is also informed by the outcome of the informal meeting of the Planning Committee in November 2021.

FINANCIAL / BUDGET IMPLICATIONS

23. There are no major financial implications from the decisions in this report, the provision of any further external legal advice can be met from current budget provision.

LEGAL IMPLICATIONS

24. The council has taken independent legal advice about the relationship of the Code of Practice for Members and Officers Dealing with Planning Matters to the law as part of the council's constitution. This advice was set in the context of some of the recent decisions taken by the Planning Committee that have contributed to its view the code or practice requires review.
25. Any specific revisions to the code of practice would need to be the subject of separate advice and must be agreed by Full Council before they are able to be implemented.

EQUALITY AND DIVERSITY

26. The council as a public body is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations between

people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Any potential changes to the code of practice would need to be subject to a separate Equality Impact Assessment to confirm they are consistent with the council's statutory obligations.

OPTIONS

27. The main options available to the committee are to:

- i. Confirm the existing Code of Practice for Members and Officers Dealing with Planning Matters is sufficient for the effective management and operation of the Planning Committee and that all members of the committee agree to observe its guidance as set out.
- ii. Ask officers to produce an amended Code of Practice for Members and Officers Dealing with Planning Matters for review by the Planning Committee taking into account the need to achieve greater clarity about attendance at site visits, when ward members can speak and achieving equality of voting rights for all councillors on ward matters.
- iii. Recognise the corporate intention to undertake a peer review of the planning service and agree the committee should have a role, alongside the Cabinet Member for Planning and Community Engagement in agreeing the scope of and contributing to the review itself.
- iv. Once agreed an amended Code of Practice for Members and Officers Dealing with Planning Matters will be recommended for adoption by Full Council at the earliest opportunity

RISK MANAGEMENT

28. The continued uncertainty about the place and reach of the Code of Practice for Members and Officers Dealing with Planning Matters may have a detrimental impact on the good and efficient governance of the Planning Committee. This is unlikely to impact on the actual decision making of the committee but there is a risk that more time will be spent on being clear about the process to make the decision than in making the decision itself.

29. It is important when the council is defending any decisions it has made that it can demonstrate a consistency of process and in the application of that process. Where there needs to be more flexibility in a process then there is a need to express that in the process itself (such as in a code of practice) and record how that flexibility might be applied. This would mitigate the risk of challenge on the basis that the council has not followed its agreed process or custom and practice in the absence of a written procedure.

EVALUATION

30. The Code of Practice for Members and Officers Dealing with Planning Matters is an important document within the council's constitution but has not been subject to review for some time. Recent discussions of the Planning Committee have identified that it may

no longer meet the needs of some of the individual members of the committee in being able to best represent the needs of their constituents and the Island's community. That being the case a review of the code of practice with a focus on those areas of greatest concern is appropriate. However, care needs to be taken so that the outcomes of any review are consistent with the council's legal obligations in general and for the determination of planning applications in particular.

31. To give the committee greater confidence in the outcome of the review it is intended to continue with the external advisor whose advice informed the production of this report. That advisor will also be used to present the outcome of the review to the Planning Committee for its agreement before recommendation to Full Council for approval, as it has the overall responsibility for amendments to the constitution.
32. It still remains an option for the committee to reaffirm its commitment to the current Code of Practice for Members and Officers Dealing with Planning Matters in light of the greater clarity the debates in recent months have brought to the purpose of the code of practice and relevance to the law. However, this would require the whole committee to agree to abide by the terms of the current code or practice as set out in the constitution.
33. Reviewing the terms under which the Planning Committee operates (code of practice) is an entirely different activity to reviewing the work of the planning department and its overall effectiveness in delivering for the needs of the Island's community as a whole. Much of this work is shaped by national planning policy with which the council must comply and this will be tested when the Planning Inspectorate (on behalf of the government) examines the proposed Island Planning Strategy later this year.
34. However, a Local Government Association led peer review of the planning services gives the council an opportunity to benchmark its services against those that are best in class and consider any actions it may need to take to build on the strengths and overcome the weaknesses that will come out of any review. It offers a tried, tested and structured approach to reviewing a service and informing decisions that will help it better meet the aspirations of the council within the context of the national planning system and legislation.

BACKGROUND PAPERS

35. ["Isle of Wight Council, Governance Advice", Veale, Wasbrough, Vizards, December 2021](#)

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