



Purpose: For Decision

Committee report

Committee	PLANNING COMMITTEE
Date	TUESDAY 01 March 2022
Title	REVIEW OF THE CODE OF PRACTICE FOR MEMBERS AND OFFICERS DEALING WITH PLANNING MATTERS
Report of	COUNCILLOR CHRIS JARMAN JP

EXECUTIVE SUMMARY

1. Councillors including Members of the Planning Committee have expressed concern that the current Code of Practice for Members and Officers dealing with Planning Matters does not correctly reflect Member desired positions on policy, does not provide sufficient clarity on the interpretation of national and local regulations and best practices, or provide sufficient definition of the protocols to be followed by Officers in their approach to the consideration of planning matters.
2. The Code of Practice is the council's interpretation of the many laws that impact on how it must consider planning applications. It embodies the council's policies and guidance from the Planning Advisory Service and Local Government Association where relevant.
3. On 22nd November 2021 at an informal meeting of the Planning Committee and other Councillors qualified as potential substitutes, a motion was passed to establish a cross party working group of Councillors to review the planning policies, practices and protocols with the support of Officers, PAS and LGA where required, to address those areas of concern to Councillors and to bring forward recommendations for revision of the Code of Practice. It was recognised that this could include revisions to all levels including potentially the council's Constitution.
4. A timescale of the working group reporting back prior to May 2022 was outlined to enable any Constitutional revisions and which would dovetail into the planned Local Government Association peer review later this year. That peer review is planned help the council identify future needs of the planning service and the resources required to meet those needs.

RECOMMENDATION

<p>On the basis of the information in this report it is recommended that the Planning Committee agrees to options ii, iii and iv:</p>

ii. Ratify and endorse the decision taken at the informal meeting of the Planning Committee on 22nd November 2021 to establish a cross-party working group of Councillors to provide recommendations for revision of the Code of Practice for Members and Officers dealing with Planning Matters for review by the Planning Committee. The working group will fall under the oversight of the Cabinet Member for Planning and Community Engagement.

iii. Recognise the corporate intention to undertake a peer review later this year to help the council identify future needs of the planning service and the resources required to meet those needs. To 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 peer review of needs.

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.

BACKGROUND

5. The systems and processes for the management and efficient operation of the council's planning service including 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.
6. Members have expressed concern with the lack of guidance and clarity in the Code of Practice regarding Officer protocols covering the full spectrum of the planning service from SHLAA through to TROs included as planning conditions. It is essential that these protocols are sufficiently defined and that they are open and transparent. Likewise concerns have been expressed as to whether it correctly and fully reflects national guidelines and present legal interpretations to guide Officers in their analysis and advice.
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". Again concern has been expressed by Members regarding the clarity and interpretation of this 'guidance' which has too frequently been open to interpretation and re-interpretation covering the spectrum of Member activities from addressing and attending the Planning Committee as a Ward Member through site visits, to the decision framework itself and call-back procedures.
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 concerned and depart from supporting the Code of Practice then the absolute determinant of any action taken or proposed will be the law. 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 although these have often failed to provide a satisfactory unambiguous conclusion.

9. In answer to the above concerns an informal meeting of the Planning Committee and other Councillors qualified as potential substitutes was convened on 22nd November 2021. This meeting attempted to address the concerns but it rapidly became evident that the scope and nature of the concerns would require a most substantial engagement. A motion was therefore passed to establish a cross-party working group of Councillors to review the Policies, Practices and Protocols of the council's planning service including the Code of Practice. It was fully accepted that this would necessitate the support of Officers, PAS and LGA where required. The cross-party working group of Members would need to bring forward recommendations for revision of the said Policies, Practices and Protocols to the Planning Committee. Whilst not determining the outcome of the WG it could reasonably be assumed that these revisions would include changes to the Code of Practice and to all levels including potentially the council's Constitution.
10. A timescale of the working group reporting prior to May 2022 was outlined to enable any Constitutional revisions and which would dovetail into the Local Government Association peer review of the planning service as a whole. That peer review is planned to help the council identify future needs of the planning service and the resources required to meet those needs. Clarification of the Policies, Practices and Protocols of the council's planning service could be reasonably be considered a necessary step prior to the LGA reviewing the needs and resources to deliver same.
11. Following the agreement made at the 'informal' Planning Committee meeting:
Cllrs Bacon, Lilley and Jarman were appointed by the Alliance Group with Cllr Medland as substitute and to assist with research.
Cllrs Spink, Price and Ward were appointed by the Conservative Group with Cllr Ellis as substitute and to assist with research.
Other singleton Cllrs were contacted, where available, and those replying all endorsed the working group and, declining active participation, asked to be kept informed of progress.

The inaugural meeting of the working group was held on 30th November 2021.
12. The Planning Committee has yet to formally ratify the cross-party working group and it is felt such endorsement is essential.

CORPORATE PRIORITIES AND STRATEGIC CONTEXT

13. 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

14. This report has been prepared following consultation between the Chairman of the Planning Committee, the Cabinet Member for Planning and Community Engagement, conversations with individual members of the committee and with a broad cross-party selection of Councillors. It is also informed by the outcome of the informal meeting of the Planning Committee on 22nd November 2021.

FINANCIAL / BUDGET IMPLICATIONS

15. 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

16. 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 of Practice requires review.

17. 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

18. 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

19. The main options available to the Planning 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 reject the decision taken at the informal meeting of the Planning Committee on 22nd November 2021 to establish a cross-party working group of Councillors to provide recommendations for revision of the Code of Practice for Members and Officers Dealing with Planning Matters for review by the Planning Committee.
- ii. Ratify and endorse the decision taken at the informal meeting of the Planning Committee on 22nd November 2021 to establish a cross-party working group of Councillors to provide recommendations for revision of the Code of Practice for Members and Officers Dealing with Planning Matters for review by the Planning Committee. The working group will fall under the oversight of the Cabinet Member for Planning and Community Engagement.
- iii. Recognise the corporate intention to undertake a peer review later this year to help the council identify future needs of the planning service and the resources required to meet those needs. To 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 peer review of needs.

- 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

20. 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 service and the Planning Committee.

21. 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.

EVALUATION

22. 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 be fit for purpose.

Submitted by:
Cllr Chris Jarman JP

Endorsed by Planning Committee Members:
Cllrs Dave Adams, Warren Drew, Claire Critchison,
Vanessa Churchman, Michael Lilley, Matt Price,
Chris Quirk, and Peter Spink.

Endorsed by Planning Committee Substitutes:
Cllrs Suzie Ellis and John Medland

Endorsed by:
Cllr Joe Robertson