

**TITLE OF REPORT: ITEM REFERRED FROM STANDARDS COMMITTEE: 12 AUGUST 2015 – PROPOSED NEW PLANNING CODE OF GOOD PRACTICE**

*The following is an extract from the Draft Minutes of the Standards Committee meeting held on 12 August 2015.*

**6. PROPOSED NEW PLANNING CODE OF GOOD PRACTICE**

The Acting Monitoring Officer presented a report in respect of a proposed new Planning Code of Good Practice. The following appendices were submitted with the report:

Appendix A – Proposed new Planning Code of Good Practice; and  
Appendix B – Current Planning Code of Good Practice.

The Acting Monitoring Officer reminded the Committee that the existing Planning Code of Good Practice (as set out at Appendix B to the report) had been adopted by Full Council on 6 September 2012 and updated under the Leader’s Delegated Authority on 9 August 2013 to make it consistent with the Member Code of Conduct adopted on 18 July 2013.

The Acting Monitoring Officer advised that the national approach to planning codes/protocols for Members was outlined in the “Probity in Planning – LGA 2013” guide to Members and Officers, and most recently in the Lawyers in Local Government (LLG) Model Code/Protocol. The good practice guide had originally been prepared in response to a series of successful court challenges relating to Members’ conduct and/or conflicts of interest. The aim of the national guide and subsequent LLG Code/Protocol had therefore been to provide a consistent approach, and to replace individual and potentially haphazard methods that could lead to a legal challenge. In reviewing the national approach to best practice it was evident that the largest difference with the existing Council Code was around the approach to site visits.

The Acting Monitoring Officer explained that the approach taken was to use the LLG Model as the starting point, as it was felt that the structure and approach of the Code, using Do’s and Don’ts, was easy to follow. By basing the approach on a Model Code it also ensured that the proposed new Code would be consistent with national best practice. It had, however, been adapted to cover and include some specific NHDC requirements, namely in respect of:

- “multi-hatted” Members (i.e. those who were Parish/Town Councillors, District Councillors and/or County Councillors – or all three);
- pre-application advice; and
- planning enforcement.

In the case of “multi-hatted” Members, this reflected a reasonable approach and one previously favoured by NHDC Members in relation to planning issues.

The Acting Monitoring Officer re-iterated the point that where the proposed new Code differed from existing practice was largely around site visits. The LLG model (as with the previous Probity in Planning) did not encourage site visits by Members and it was recommended that NHDC now followed this national good practice approach. What officers had sought to distinguish was the difference between a “site visit” (i.e. a procedural planning term for entering onto the site) and visits from public vantage points (i.e. “location/drive by” visits). The former would be arranged by Planning Officers, where relevant, and Members may still undertake the latter.

The Acting Monitoring Officer advised that the best practice approach that Members were not advised to go on visits on their own was to avoid accusations that these were arbitrary, unfair or lobbying opportunities that would lead to accusations of bias. In lieu of this (as per LLG and previous Probity in Planning advice), site visits would be organised by Planning

Officers where there was a clear and substantial benefit (i.e. if large/controversial). In all cases short presentations on the applications that go to Committee would be provided by Planning Officers, with pictures, site and location plans and design images, together with development plan/material planning considerations given in bullet form. This approach would ensure that all present had the same information, that Members were directed to key considerations, and that the public were made aware of what had been considered relevant in planning terms. The Planning Control Committee meetings in June and July 2015 had adopted this new approach to how the information was presented.

The Acting Monitoring Officer advised that, subsequent to the publication of the agenda, the Head of Development and Building Control had suggested a further amendment to the new Code. This amendment had been tabled at the meeting, and referred to Section 3 of the Code, second bullet point, as follows (changes in bold):

- “• Don't get involved in pre-application advice or negotiations. Planning Officers will deal with this, and applicants are made aware that this is not binding on the authority. Pre-application advice is **available for all applications and** encouraged for certain types of applications. ~~and~~ Ward Councillors (and other Councillors as thought appropriate) will be informed **if pre-application advice has been provided for Major(1) applications**. Active involvement of Committee Members in a proposal prior to determination is likely to lead to an appearance of bias and/or predetermination if the Committee becomes the decision making body.

1 footnote: As defined under Art 2, The Town and Country Planning (Development Management Procedure) (England) Order 2015”

The Committee supported the above amendment, and made a small number of minor textual changes. The Committee also requested the Acting Monitoring Officer to incorporate some additional wording into the document to clarify the position of Members in respect of pre-application presentations from applicants/developers; dealing with enquiries from constituents; and perceptions of bias/pre-determination.

During the debate, and in response to a question from the Parish Council representative, it was clarified that the Code applied only to District Council Members, and in particular to the role of Planning Control Committee Members as decision-makers.

During the debate, the Committee also queried whether planning application site notices would need to be amended to take account of the New Code. The Acting Monitoring Officer undertook to take up this matter with the Development and Conservation Manager.

**RECOMMENDED TO COUNCIL:** That the proposed new Planning Code of Good Practice, as attached at Appendix A to the report, as amended, be adopted, inclusive of additional wording from the Acting Monitoring Officer to clarify the following:

- Pre-application presentations from applicants/developers;
- Dealing with enquiries from constituents; and
- Perceptions of bias/pre-determination.

**REASON FOR DECISION:** To ensure good governance within the Council and that the Council's Planning Code of Good Practice remains fit for purpose and is consistent with best practice.

*The following is the report considered by the Standards Committee at its meeting held on 12 August 2015 (Note: the changes in red in Appendix A are the amendments made by the Standards Committee) .*

## **TITLE OF REPORT: PROPOSED NEW PLANNING CODE OF GOOD PRACTICE**

### **REPORT OF THE ACTING MONITORING OFFICER**

#### **1. SUMMARY**

- 1.1 The report seeks the views of the Standards Committee on a proposed new Planning Code of Good Practice and the referral of the proposed new Code to Full Council for adoption.

#### **2. RECOMMENDATIONS**

- 2.1 That the Standards Committee recommends to Full Council that the proposed new Planning Code of Good Practice attached at Appendix A be adopted.

#### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To ensure good governance within the Council and that the Council's Planning Code of Good Practice remains fit for purpose and is consistent with best practice.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Consideration was given to amending the existing Code to bring it into line with current best practice, but adaptation of the "Lawyers in Local Government ('LLG') Code or Protocol" 2014 was considered the most appropriate course of action.

#### **5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND MEMBERS**

- 5.1 Consultation has been undertaken with the Leader and the Executive Member for Planning and Enterprise, the Senior Management Team, Senior Planning Officers and the Planning Team. Comments received have been incorporated in the draft Code being considered by the Committee.

#### **6. FORWARD PLAN**

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

#### **7. BACKGROUND**

- 7.1 The existing Planning Code of Good Practice (see Appendix B) was adopted by Full Council on 6 September 2012 and updated under the Leader's Delegated Authority on 9 August 2013 to make it consistent with the Member Code of Conduct adopted on 18 July 2013.
- 7.2 The national approach to planning codes/ protocols for Members was outlined in the "Probity in Planning – LGA 2013" guide to Members and Officers, and most recently in the LLG Model. The good practice guide had originally been prepared in response to a series of successful court challenges relating to Members' conduct and/or conflicts of interest. The aim of the national guide and subsequent LLG Code/ Protocol has therefore been to provide a consistent approach, and replace individual and potentially haphazard methods that could lead to a legal challenge. In reviewing the national approach to best practice it is evident that the largest difference with the existing Council Code is around the approach to site visits.

## **8. ISSUES**

- 8.1 The approach taken was to use the LLG Model as the starting point, as it was felt that the structure and approach of the Code, using Do's and Don'ts, was easy to follow. By basing the approach on a Model Code it also ensured that the proposed new Code would be consistent with national best practice. It has, however, been adapted to cover and include some specific NHDC requirements.

### **NHDC specific clauses**

- 8.2 The 2012 review of the Planning Code of Good Practice introduced three new areas, partially in response to requests from Members and partially to clarify working practices. The LLG model has been adapted to cover these three areas, namely:

- "multi-hatted" Members (i.e. those who are Parish/ Town Councillors, District Councillors and / or County Councillors – or all three);
- pre-application advice; and
- planning enforcement.

In the case of "multi-hatted" Members, this reflects a reasonable approach and one previously favoured by NHDC Members in relation to planning issues.

### **Site visits**

- 8.3 As identified at paragraph 7.2 above, where the proposed new Code differs from existing practice is largely around site visits. The LLG model (as with the previous Probity in Planning) does not encourage site visits by Members and it is recommended that NHDC now follows this national good practice approach. What we have sought to distinguish is the difference between a "site visit" (i.e. a procedural planning term for entering onto the site) and visits from public vantage points (i.e. "location/ drive by" visits). The former will be arranged by Planning Officers where relevant and Members may still undertake the latter.
- 8.4 The best practice approach that Members are not advised to go on visits of their own is to avoid accusations that these are arbitrary, unfair or lobbying opportunities that will lead to accusations of bias. In lieu of this (as per LLG and previous Probity in Planning advice), site visits will be organised by Planning Officers where there is a clear and substantial benefit (i.e. if large/ controversial). In all cases short presentations on the applications that go to Committee will be provided by Planning Officers, with pictures, site and location plans and design images, together with development plan/ material planning considerations given in bullet form. This approach will ensure that Members are directed to key considerations and the public are made aware of what has been considered relevant in planning terms. The Planning Control Committee meetings in June and July have adopted this new approach to how the information is presented.

## **9. LEGAL IMPLICATIONS**

- 9.1 The terms of reference of the Standards Committee include at paragraph 7.5.10 "to advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council". The terms of reference of Full Council include at paragraph 4.4.1(s) "adopting and amending the Authority's Code of Conduct for members and other codes and protocols comprising the ethical framework".
- 9.2 The Code assists to regulate Member actions and ensure good governance. It also assists transparency of decision making and sets expectations as to how Councillors approach planning matters. This helps to ensure that the Council's

decision making on planning matters is robust and reduces the potential for successful appeals or challenges to decisions. This Code follows best practice and assists the Council to fulfil its statutory duty to promote and maintain high standards of conduct for both Members and Officers.

## **10. FINANCIAL IMPLICATIONS**

10.1 There are no capital or revenue implications arising from the content of this report.

## **11. RISK IMPLICATIONS**

11.1 Appropriate policy frameworks help to ensure good governance of the Council and therefore reduce risk of poor practice or unsafe decision making.

## **12. EQUALITIES IMPLICATIONS**

12.1 The Equality Act 2010 came into force on the 1<sup>st</sup> October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5<sup>th</sup> April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

## **13. SOCIAL VALUE IMPLICATIONS**

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

## **14. HUMAN RESOURCE IMPLICATIONS**

14.1 Training will be offered to Members and relevant officers as part of the roll out of the new Code. This will be met from within existing resources.

## **15. APPENDICES**

15.1 Appendix A – Proposed new Planning Code of Good Practice.

15.2 Appendix B – Current Planning Code of Good Practice.

## **16. CONTACT OFFICERS**

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## **17. BACKGROUND PAPERS**

17.1 None.