

**COUNCIL
16 JANUARY 2020**

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: REVIEW OF PLANNING CODE OF GOOD PRACTICE

REPORT OF: LEGAL REGULATORY TEAM MANAGER / DEPUTY MONITORING OFFICER

CHAIR OF STANDARDS: CLLR JUDI BILLING

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

- 1.1 The report details changes to the council's Planning Code of Good Practice as part of its review.

2. RECOMMENDATIONS

- 2.1. That the Council be recommended to adopt the Planning Code of Good Practice as amended and contained at Appendix A

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. None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. Group Leaders and the Standards Committee Chair are kept informed of Monitoring Officer and standards matters on a monthly basis. The Monitoring Officer and Deputy Monitoring Officers also hold quarterly meetings with the Independent Person, Reserve Independent Person ('IPs') and the Chair of Committee.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1 Within its terms of reference the Standards Committee has a function “to advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council”
- 7.2 The Standards Committee considered the amended Planning Code of Good Practice on 22 October 2019 and minutes can be found [here](#).
- 7.3 Consultation with the Chair and Vice-Chair of the Standards Committee, the Independent Person and Reserve Independent Person subsequently took place and a meeting was held between those parties, the Service Director for Legal and Community and Monitoring Officer and the Legal Regulatory Team Manager on 25 November 2019.
- 7.4 The Planning Code of Good Practice is accessible at Appendix 3 to Section 8 of the Council’s Constitution.
- 7.5 The Council’s current Planning Code of Good Practice is based on the Model Member’s Planning Code (the Model Code) produced by Lawyer in Local Government (LLG) and was adopted by the Council on 3 September 2015.
- 7.6 The Model Code was first produced in 2003 in response to a series of successful court challenges concerning local planning authorities and their Members’ Conduct of Conduct and/or conflicts of interests. It replaced a number of individual and sometimes haphazard approaches that existed in individual councils at the time.
- 7.7 The drafting of the Model Code was subject to consultation and comment from a number of local authorities through the machinery of the Association of Council Secretaries and Solicitors (now LLG), the Local Government Association, the Local Government Ombudsman, Audit Commission and from firms of solicitors or barristers acting on their behalf.
- 7.8 Following its publication, the Model Code proved to be one of the most successful and popular guidance documents produced by LLG, being adopted by councils across the country.
- 7.9 The NHDC code went to Full Council on 3 September 2015 before going back to Standards Committee in March 2016 at which it was agreed to review it again at the October 2016 meeting, which resolved -

(3) That, in respect of the Planning Code of Good Practice, the Monitoring Officer be requested to make minor amendments to the wording of Section 4 to make it sufficiently clear that explanation of the procedure could be discussed;

(4) That, subject to (3) above and the correction of typographical errors, the Planning Code of Good Practice be supported.

8. RELEVANT CONSIDERATIONS

- 8.1. In 2018, the Supreme Court gave its approval of the Model Code when it described it as “useful advice” and “sound practical advice” in a ruling (*R (CPRE Kent) v Dover District Council (SC(E)) 2018 1 WLR*).

8.2. The NHDC Planning Code of Good Practice, whilst broadly identical to the Model Code, contains some differences to the LLG version. The main differences between the two are detailed in Appendix B along with comments on the effect those differences have.

8.3. The amendments in this review are:

- Part 2 – Removal of reference to pre-application advice and members with DPI or Declarabel interest, this is because members are only informed of advice on major applications upon completion of pre-application advice (it should be noted that many of these ‘majors’ are not completed but proceed midway through to an application).
- Part 3 – Substituting the word “provided” for “completed” as this is less ambiguous.
- Part 4 – First bullet point: Inserting the words “or appear as a substitute” in order to cover off this eventuality.
Second bullet point: Deleting the word “formal” when describing meetings, as this could cause confusion where a meeting is proposed to take place in an otherwise informal setting, such as an applicant’s home for example.
Third bullet point: Inserting reference to Service Director - Regulatory
Fourth bullet point: Inserting paragraph to cover off appearing as a substitute in order to cover off this eventuality, and also addressing the situation concerning Ward advocates not sitting on those items they have acted on.
- Part 5 – Clarification around the situation where a member has acted as a Ward advocate.
- Part 6 – Removal of CPRE from an example of special interest group, as they now identify as a lobbying group.
- Part 7 – Clarification on how to request a site visit.
- Part 8 – Clarification of when member of the public may attempt to make contact with members, to avoid ambiguity.
- Part 9 – Updating job titles in line with the council’s restructure.
- Part 10 – Referring to previous decisions in similar cases. This is due to the courts recently highlighting that the earlier decisions of a planning committee are a very important material considerations when applications are on the same site and for similar development proposals.
- Part 11 – First and third bullet point: Tying the Code in with the Council’s Corporate Enforcement Policy.
- Part 13 – Clarifying that the Code of Conduct applies fist and then the Planning Code of Good Practice.

8.4. The proposed changes help to remove ambiguity, address the situation where members may be appearing as a substitute, as well as making it clear that members are free to act as ward advocates and the implication of this.

9. LEGAL IMPLICATIONS

9.1. The functions of Full Council at paragraph 4.4.1(a) of the Constitution include “approving or adopting the Policy 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. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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. There are no direct equalities implications from this report.

- 12.2. Good governance and high ethical standards of conduct ensure that local government decisions are taken in the public interest. The review of the best practice recommendations and appropriate changes will ensure that NHDC will continue demonstrate due regard to the objectives of the Public Sector Equality duty.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1. None. The work outlined within the report is within the caseload of the Deputy Monitoring Officer and the legal team.

15. APPENDICES

- 15.1. Appendix A – Clean version of amended Planning Code of Good Practice.
- 15.2. Appendix B – Amended Planning Code of Good Practice
- 15.3. Appendix C – Comparison between NHDC Planning Code of Good Practice and the LLG Model Code

16. CONTACT OFFICERS

- 16.1. James Ellis; Legal Regulatory Team Manager and Deputy Monitoring Officer:
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17. BACKGROUND PAPERS

17.1. None other than those referred to/ linked above.