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Report of: **Borough Solicitor**

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**SUBJECT: PLANNING CODE OF GOOD PRACTICE**

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Wards affected: Borough wide

### **1.0 PURPOSE OF THE REPORT**

- 1.1 To update the Planning Code of Good Practice to reflect current good practice and recent case law.

### **2.0 RECOMMENDATIONS**

- 2.1 That the updated Planning Code of Good Practice, attached at Appendix 1, be adopted.
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### **3.0 BACKGROUND**

- 3.1 Members will recall that at the February meeting of Planning Committee members considered a report of the Borough Solicitor recommending adding additional wording to paragraph 10 of the Planning Code of Good Practice, in the form of a checklist, to reflect current good practice and recent case law, when dealing with motions contrary to officer recommendation.

- 3.2 Members considered that it would be helpful to discuss the proposed update at the annual planning training session and accordingly resolved:

*That the item be deferred until the next available meeting following the Members' planning training session, due to be held in Summer 2018.*

- 3.3 The planning training session was held on 10 July 2018 and was well attended by Planning Committee members. The training session was led by a representative of the Planning Officers' Society and part of the training day focussed on decision making at planning committees and the proposed update to the Code (see Appendix 1 – additional wording/changes shown in highlighted italics).

#### **4.0 PROPOSED UPDATE – DECISION MAKING – CHECKLIST**

4.1 The recent Supreme Court decision in the case of *Dover* endorses the long standing practice of Planning Committee to provide reasons for all its decisions, particularly in circumstances where members wish to determine a planning application in a different way to officer recommendation. This is consistent with the Council's Members' Code of Conduct which provides that members must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Council (paragraph 7.2).

4.2 Several key points emerged from the Supreme Court's decision:

- Where there is a legal requirement to give reasons, an adequate explanation of the ultimate decision is needed, leaving no room for genuine doubt as to what has been decided and why.
- Committees of elected members of local authorities are to be held to the same standard as is applicable to others (such as inspectors or the Secretary of State).
- Where a defect in reasons goes to the heart of the justification for planning permission, the only appropriate remedy is to quash the permission.
- Local authorities are already under a statutory duty to give reasons where a planning application is refused. Although there is no statutory duty to give reasons where permission is granted, fairness under the common law will often require reasons to be given.
- The Court emphasised the importance of open justice and transparency, particularly in a decision where there is significant public interest.

4.3 The proposed update is designed to build upon the safeguards already existing at paragraph 10 of the Code to help to ensure that decisions of Planning Committee can withstand legal scrutiny. Accordingly, a new final bullet point to paragraph 10 is proposed reflecting current good practice (in the form of a checklist) to ensure no important matters are overlooked when members wish to determine an application contrary to officer recommendation.

4.4 Adopting the checklist will help to ensure that members have the benefit of professional officer advice regarding the implications of taking a decision contrary to officer recommendation and that members' reasoning is transparent and clearly explained to members of the public present at the meeting and recorded within the minutes. In addition, where the proposal is to approve the application, the checklist helps to ensure that arrangements are put in place to secure the imposition of all necessary planning conditions and that Section 106 community benefits can be delivered.

4.5 At the planning training session members were supportive of the checklist and considered that it would assist them during the decision making part of their

deliberations. With regard to situations where the Committee are considering approving an application contrary to officer recommendation one former member did express a preference for any necessary planning conditions to be considered at a future meeting of Planning Committee, rather than being delegated to officers (in consultation with the Chairman or Vice-Chairman). It is important to note that the checklist is designed to ensure that important matters are not overlooked in the decision making process and would not prevent, in appropriate circumstances, Committee resolving to consider planning conditions recommended by the Director of Development and Regeneration at a future meeting. However, the expectation would be that this would be reserved to more complex matters, rather than being as a matter of routine, given the need to ensure that planning applications are determined in accordance within the challenging statutory timescales.

- 4.6 Minor amendments (also shown in highlighted italics at page 2 of Appendix 1) are also suggested to the Code to reflect changes in personnel/planning terminology since the Code was last considered.
- 4.7 It is usual to report any updates of the Planning Code of Good Practice to Standards Committee. The next meeting is due to be held in Spring 2019 and a report will be prepared for that meeting noting the decision of Planning Committee with regard to the updated Code.

## **5.0 SUSTAINABILITY IMPLICATIONS**

- 5.1 There are no significant sustainability impacts associated with this report and, in particular, no significant impact on crime and disorder.

## **6.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 6.1 There are no significant financial or resource implications arising from this report.

## **7.0 RISK ASSESSMENT**

- 7.1 The adoption of an updated Planning Code of Good Practice that provides a checklist for members when taking decisions contrary to officer recommendation will help to ensure that decisions reached by members are robust and able to withstand legal scrutiny.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

The adoption of an updated Planning Code of Good Conduct to reflect current law and good practice does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

## **Appendices**

1. Updated Planning Code of Good Practice