



**PLANNING COMMITTEE:
15 FEBRUARY 2018**

Report of: Borough Solicitor

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SUBJECT: PLANNING CODE OF GOOD PRACTICE

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.

3.0 BACKGROUND

3.1 Members will be familiar with the Planning Code of Good Practice which forms part of the Council's Constitution and was first issued in 2003. It is derived from a model code promoted by the Association of Council Secretary and Solicitors (now Lawyers in Local Government) and has been regularly updated over the years to reflect changes in the law and Government guidance.

3.2 The Planning Code of Good Practice is a supplementary code to the Members' Code of Conduct and provides guidance on the special role played by members who are involved in the process of making decisions on planning proposals at Planning Committee. The Code of Good Practice applies equally to those who are standing members and to those who only occasionally attend as substitutes on the Committee. The Code is also relevant to those members who get involved in planning matters in their ward in a representative role, whether they are members of the Planning Committee or not.

3.3 The Code provides a series of helpful advice on things to do, and to avoid doing, in relation to the issues of

- Decision Making
- Development Proposals and Members' interests under the Members' Code of Conduct
- Fettering Discretion in the Planning Process (natural justice, predisposition and predetermination)
- Contact with Applicants, Developers and Objectors
- Lobbying of Members
- Site Visits

3.4 The key aim of the Code is to ensure that when members deal with matters through the planning process there are no grounds for suggesting that a decision has been biased, partial, or not well-founded in any way and that decisions are made having taken into account all relevant and material planning considerations.

4.0 EXPLANATION OF THE PROPOSED UPDATE – GIVING REASONS FOR DECISIONS – CHECKLIST

4.1 In the recent case of *Dover District Council v CPRE* the Supreme Court considered the correct legal test to be applied in assessing the adequacy of reasons provided by local planning authorities when granting planning permission.

4.2 The case concerned a decision by members of Dover District Council to grant planning permission for a residential development of 521 residential units in an Area of Outstanding Natural Beauty. The decision diverged from the planning officers' recommendation that permission be limited to 365 units. The Campaign for the Protection of Rural England brought a claim for judicial review against the Council on a number of grounds, including the lack of reasons given by members for their decision.

4.3 The Court of Appeal quashed the decision to grant planning permission and this decision was upheld by the Supreme Court on appeal. Although the case particularly concerned specific duties under the Environmental Impact Regulations the Supreme Court considered the duty of Local Planning Authorities to give reasons more widely. 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.

4.4 The case of *Dover* endorses the long standing practice that has been adopted by 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).

4.5 Given the case law now appears to be settled, the Planning Code of Good Practice can be updated in the light of the decision in *Dover* and current good practice. Accordingly, it is proposed that paragraph 10 of the Code be expanded to provide a practical checklist of steps to be taken in circumstances where members wish to take a decision contrary to officer recommendation. Following the checklist will help to ensure that decisions reached by members are robust and able to withstand legal scrutiny. The updated Code is attached at Appendix 1.

4.6 As well as ensuring that members have the benefit of professional officer advice regarding the implications of taking a decision contrary to officer recommendation, adhering to the checklist also ensures that members' reasoning is explained clearly 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 appropriate delegations are put in place to secure the imposition of all necessary planning conditions and that Section 106 community benefits can be delivered.

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 on 20 March 2018 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 to help to ensure that decisions reached by members are robust and able to withstand legal scrutiny.

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