

## CONSTITUTION UPDATE: PLANNING CODE OF PRACTICE

|   |                                    |
|---|------------------------------------|
| <b>Head of Service:</b>                         | Amardip Healy, Chief Legal Officer |
| <b>Wards affected:</b>                          | (All Wards);                       |
| <b>Urgent Decision?(yes/no)</b>                 | No                                 |
| <b>If yes, reason urgent decision required:</b> |                                    |
| <b>Appendices (attached):</b>                   | 1: draft Planning Code of Practice |

### Summary

To update the draft Planning Code of Practice.

### Recommendation (s)

#### The Committee is asked to:

- (1) consider the amended draft Planning Code of Practice;
- (2) approve the circulation of the amended draft Planning Code of Practice to all Members of Council for comment;
- (3) to delegate to the Chief Legal Officer following consultation with the Committee's Chair and Vice Chair the approval of any necessary changes to the draft Planning Code of Practice following Member comments;
- (4) recommend to Council the adoption of the approved Planning Code of Practice;
- (5) note that the draft Planning Code of Practice may be bought back to Standards Committee before its recommendation to Council.

## 1 Reason for Recommendation

- 1.1 Review of Part 5 of the Constitution is continuing with the draft Planning Code of Practice being the next document which requires updating.

## 2 Background

# Standards Committee

16 June 2021

- 2.1 In November 2017, Planning Committee agreed to a Planning Improvement Action Plan. The Plan contained a number of actions to implement changes to practices and procedures, with one action to update the planning Code of Conduct. A new Code was introduced following approval by Council in February 2018. The Code was required to be reviewed after six months of operation.
- 2.2 Following a number of changes within the Planning Service, the review of the Code was delayed.
- 2.3 In November 2019, the Committee considered a new draft Planning Code of Practice. This followed a period where a number of changes to the Constitution had taken place, which included a new Code of Conduct for Members (April 2019) and a Protocol for Managing Member/Officer Relations (July 2018). Taken together, any revision of the Planning Code of Practice no longer required a repetition of matters which sat with the wider ethical framework documents.
- 2.4 The new draft Planning Code was a wholly new document. The focus of the document set out clear processes and procedures for Planning Committee and how the Committee operated at its meetings. Members of Planning Committee were invited to the Standards Committee to ensure an informed discussion on the proposed new Code.
- 2.5 The draft Code then proceeded to Council in January 2020, where it was not approved. The issues raised at Council were:
  - 2.5.1 Remove the following words from guidance note to para 3.7 “Note to Members: Members should take great care to ensure that they have declared if they have been approached by any party during the ‘declaration of interests’ item”. Members voted in favour of the removal of this note.
  - 2.5.2 A number of concerns were raised about the proposed changes to public speaking arrangements. Concerns that the proposed registration period might not be accessible to some interested parties, and that greater flexibility might be required for large applications. It was explained at the Meeting that the registration requirements were designed to be broader than those which currently existed, and that the number of speakers who were able to speak in objection were proposed to be increased from 1 to 2.
- 2.6 Since Council has already voted on the issue set out at para 2.5.1, the note has been removed from the draft code. It is however, important to note that the practice which Planning Committee has been operating over the last year, is of Committee Members declaring contact from interested parties during the declaration of interests’ item.

## **Public Speakers registration**

# Standards Committee

## 16 June 2021

2.7 The current Code of Practice provides as follows:

*“11.3 An individual or representative of a local group/organisation who wishes to speak at a Planning Committee must register their wish to do so between 6pm and 7pm on the evening of the meeting at the Town Hall reception desk.*

*11.4 Normally, in addition to the applicant/agent, only one member of the public may speak for or against a single application. Registration will normally be on a first come first served basis but an individual may choose to waive this right in favour of an individual who attempted to register at a later time. Alternatively, several members of the public may appoint one person to speak on their behalf provided they can reach agreement to this amongst themselves.”*

2.8 The process resulted in numerous issues and complaints and did not work well either for those wishing to speak nor those trying to administer the process.

### **2020 proposed changes to public speaker registration**

2.9 The new Code proposed an entirely new process, so as to address the issues of the old. The new proposed requirements were set out at para 8 of the Guidance on Committee Procedure. Namely:

#### **PUBLIC SPEAKING**

8.1 *Although members of the public have no legal right to speak at Planning Committee meetings, the Council recognises the value of representations on planning matters. Therefore the Council has adopted a protocol which encourages public participation, by allowing those wishing to address the Planning Committee to be able to do so. The rights set out below are those that apply.*

#### **Speakers**

8.2 *Up to 2 speakers who wish to object, and up to 2 who wish to support (which includes the agent/ applicant) may make oral representations, with 3 minutes allowed per speaker. The following procedure will apply:*

- Planning officers will give, to the applicant and those that have lodged a consultation response, at least 5 clear working days' notice of the date of the Committee meeting;*
- The agenda and reports for the meeting and relevant plans are published on the Council's website at least five clear working days before the meeting;*
- Speakers must register their wish to speak with Democratic Services between 9am and noon on the day of Committee. Contact details are contained on the front sheet of the agenda, and are:*

*Tel: 01372-732121*

*democraticservices@epsom-ewell.gov.uk*

- Only one speaker per household or organisation will be allowed;*
- The speaking slots will be filled on a first come, first serve basis (large groups may be required to nominate a lead speaker or need to be*

# Standards Committee

## 16 June 2021

*represented by a Ward Member to ensure a fair balance of speakers – see 8.4 below);*

- *If no advance notice of those wishing to speak in accordance with this Code, is given, there is no right to address the Committee;*
- *Public speakers have no right of reply, and cannot engage in any debate.*

2.10 Therefore the substantive change was registration to speak from the morning of a meeting, rather than the evening of a meeting. The change meant that someone who wanted to speak no longer needed to attend the Town Hall in person between 6 pm and 7pm to register to speak.

### **Remote meetings practice for public speakers**

2.11 During the period of remote meetings, the registration process for speakers had to change. It was no longer possible for in person registration to take place. The process which was put in place required:

2.11.1 notice to speak to happen a few days before the Committee meeting – this allowed for support to be given to speakers with the remote meeting platform

2.11.2a copy of the speaker's statement to be sent in advance of the meeting – this allowed a speech to be read out in the event of any IT failure.

2.12 The process for those wishing to speak at remote Planning Committees was set out on in a dedicated section in the Committee's Agenda papers. By way of example, for a meeting taking place on the 10 December 2020, the deadline for registration was noon 7 December 2020. The information about the deadline to register is clearly stated on the Agenda.

2.13 The example of the December 2020 Committee is as follows:

#### ***“Public speaking***

*Public speaking in support or objection to planning applications is permitted at meetings of our Planning Committee. As this meeting of the Committee will be held online, **you must register in advance if you wish to speak.***

*To register to speak at this Planning Committee meeting, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), tel: 01372 732000 in advance of the deadline for registration, which is given below.*

*We will ask you to submit a written statement that can be read out at the meeting in the event of any technical issues during the meeting. The statement must be of no more than 3 minutes in length when read aloud.*

*If a number of people wish to speak on a particular application, public speaking will normally be allocated in order of registration. If you fail to submit your written statement, then your place may be allocated to those on the speakers waiting*

# Standards Committee

## 16 June 2021

*list. Further information is available by contacting Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), tel: 01372 732000.*

**Deadline for public speaking registration: Noon, 7 December.**

<https://democracy.epsom-ewell.gov.uk/documents/g955/Agenda%20frontsheet%2010th-Dec-2020%2019.30%20Planning%20Committee.pdf?T=0>

- 2.14 In addition to this notice, the publication of the agenda papers was moved from 5 days before a meeting to 10 days before a meeting. Again this was designed to give early notice of agenda items.
- 2.15 Since May 2020, Planning Committee has dealt with a number of controversial planning applications. The meetings have recorded some of the highest numbers of public attendance and public speaking.

### **New proposed changes to public speaker registration**

- 2.16 The evidence from the current operational speaker registration system, is that the concerns raised by some Members at Council in January 2020, have not materialised. The concerns were addressed by:

- 2.16.1 signposting a clear system for public speaking on the Agenda papers;

- 2.16.2 setting a clear deadline for registration again on the Agenda papers.

These have all helped to resolve Member's fears around accessibility.

- 2.17 All the systems (former and current) are based on a first come first served basis. By having a clear published process and a deadline date for registration set out on the agenda papers, the system for managing the process of registration is now effective in terms of administration, fairer and simpler to all those who are interested in speaking.
- 2.18 With a return to in person meetings, we have continued to webcast planning committee meetings through the remote meeting platform. This has allowed those who wish to deliver their statements virtually to do so.
- 2.19 Whether the Council continues with its current format of interactive meetings is something which will need to be fully explored as part of an options appraisal for replacement of the current audio equipment in the Chamber. However, the evidence from the last Municipal Year, where 16 meetings instead of the yearly average of around 11 meetings, were held, provides clear support for the current process for registration of speaking continuing.

# Standards Committee

## 16 June 2021

- 2.20 There have been 3 complaints following missed speaker registration opportunities over the last year. All concern the allegations of not being aware of when a matter was going to Committee and not of the process for registration for speaking, which is open and transparent. Under the old system, there were complaints or expressions of dissatisfaction in relation to almost every meeting.
- 2.21 The current practice for speaker registration works infinitely better than the old system, which required registration on the day of the meeting in the evening. It is therefore proposed that the draft Code be amended so as to incorporate the current public speaking registration practices, which have proved to be more flexible to those who may not always be able to register in person just before a meeting.

### Public attendance data for Planning Committees held remotely

- 2.22 The data from attendance at remote meetings again helps to highlight that not everyone is able to access evening meetings in person. The table below sets out the data around remote attendance at Planning Committees over the last year:

| Title                               | Date      | Public/<br>Observer connections |
|-------------------------------------|-----------|---------------------------------|
| Planning Committee                  | 13-May-20 | 20                              |
| Planning Committee Meeting          | 18-Jun-20 | 15                              |
| Planning Committee Meeting          | 09-Jul-20 | 74                              |
| Planning Committee Meeting          | 23-Jul-20 | 26                              |
| Planning Committee Meeting          | 03-Sep-20 | 39                              |
| Planning Committee: Special Meeting | 23-Sep-20 | 39                              |
| Planning Committee Meeting          | 08-Oct-20 | 85                              |
| Planning Committee Meeting          | 05-Nov-20 | 15                              |
| Planning Committee Meeting          | 18-Nov-20 | 119                             |
| Planning Committee Meeting          | 10-Dec-20 | 8                               |
| Planning Committee Meeting          | 14-Jan-21 | 18                              |
| Planning Committee: Special Meeting | 18-Feb-21 | 26                              |
| Planning Committee Meeting          | 01-Apr-21 | 8                               |
| Planning Committee Meeting          | 22-Apr-21 | 116                             |
| Planning Committee Meeting          | 27-Apr-21 | 27                              |
| Planning Committee: Special Meeting | 12-May-21 | 84                              |

# Standards Committee

16 June 2021

- 2.23 The meeting on the 12 May 2021 was an in person meeting, but one which was also made available live remotely. At that meeting 2 people attended in person, 84 watched it remotely.
- 2.24 The capacity of the public gallery is 42 (with the Covid restrictions, this is now 8). It was rare to have a full public gallery at meetings of Planning Committee. However, the pressure on seating occurred when contentious applications were being heard.
- 2.25 How the public are advised of when an item of interest is coming before a Planning Committee is a matter which needs attention. It has been and remains the source of the highest reasons for public dissatisfaction with the Council's planning processes. However, the role of the Planning Code is not to address what happens as part of a planning process. The focus of the Code is the conduct and arrangements of the meeting of Planning Committee only. The Code is a living document and will need to flex and change as needed.

## **Other Changes**

### **Publication of agenda papers**

- 2.26 In line with the practice over the last year, it proposed that agendas be published 10 clear working days before a meeting. The legal requirement is 5 days. However, to allow the public enough time to consider an officer's report and then to consider whether they wish to speak, 10 days is considered as good practice.
- 2.27 Some additional words have been added to the Code to highlight to the public when agendas are published. The public information on the Council's website will also be improved to signpost how to check if any application is on an agenda and what to do if someone wishes to speak on an item.

### **Speakers to present remotely**

- 2.28 To enable the possibility for hybrid meetings and for speakers to present remotely, some additional paragraphs have been added at Part 2, para 8.2. This includes the submission of a written copy of the speech and it also confirms that copies of speeches will not be passed on to planning officers before the Committee Meeting.

### **Ward Members**

- 2.29 The proposed Code provided for those Wards Members of an adjoining to or on the boundary of where a development was being proposed, would have the ability to call in an application, if the call in criteria were met (see Part 1: para 9).

# Standards Committee

## 16 June 2021

- 2.30 As a result, para 8.4 of Part 2 has been updated to clarify that such a Ward Member (whose ward is adjoining or on the boundary of the ward with the development) can also speak at Planning Committee. There is no limited on the number of Ward Members who can speak provide they fall within those categories.

### **Part heard and adjourned**

- 2.31 A further amendment has been made to Part 2, para 8.6 to clarify a 'part heard' application which is 'adjourned'. This is to make it clear what speaking rights carry forward.

### **Probity in planning**

- 2.32 In December 2019, the Local Government Association (LGA) and the Planning Advisory Service (PAS) published an updated "Probity in planning" advice note to Councillors and Officers involved in making planning decisions. A link to the document is included at the end of this report.
- 2.33 At present it is not felt any further changes need to be recommended as a result of the LGA advice note.

### **Next Steps**

- 2.34 To ensure wider engagement on the amended draft Code, the recommendation is to consult all Members for their views on the updated draft. This would include a workshop as well as a survey.
- 2.35 The comments and suggestions will be collected and considered by the Chief Legal Officer in consultation with Standard Committee's Chair and Vice Chair. In the event any feel that the suggestions or comments are of such a material nature, where they need to go before a Standards Committee, then a special Standards Committee will be called. Hence the inclusion of recommendation 4. However, if the matters raised can be addressed or responded to without the need for material changes, then a report will proceed to Council for approval of any updated Code.

## **3 Risk Assessment**

### Legal or other duties

#### 3.1 Impact Assessment

3.1.1 none arising from the contents of this report.

#### 3.2 Crime & Disorder

3.2.1 none arising from the contents of this report.

# Standards Committee

## 16 June 2021

### 3.3 Safeguarding

3.3.1 none arising from the contents of this report.

### 3.4 Dependencies

3.4.1 none arising from the contents of this report.

### 3.5 Other

3.5.1 none arising from the contents of this report.

## 4 Financial Implications

4.1 None arising from the contents of this report.

4.2 **Section 151 Officer's comments:** none arising from the contents of this report.

## 5 Legal Implications

5.1 It is important for the Council to keep under review the Planning Code of Practice. Regular reviews help to keep pace with changes in good practice and ensures risks are mitigated. The Code is principally directed to the conduct of processes at Planning Committee, to ensure they are transparent to all.

5.2 **Monitoring Officer's comments:** none arising from the contents of this report.

## 6 Policies, Plans & Partnerships

6.1 **Council's Key Priorities:** The following Key Priorities are engaged: Effective Council.

6.2 **Service Plans:** The matter is included within the current Service Delivery Plan.

6.3 **Climate & Environmental Impact of recommendations:** none arising from the contents of this report.

6.4 **Sustainability Policy & Community Safety Implications:** none arising from the contents of this report.

6.5 **Partnerships:** none arising from the contents of this report.

## 7 Background papers

7.1 The documents referred to in compiling this report are as follows:

**Previous reports:**

# Standards Committee

## 16 June 2021

- Constitution Update – Revisions to Part 5: Section 8 Planning Code of Practice, Standards Committee 19 November 2019

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=151&MId=899>

- Constitution Update – Revisions to Part 5: Section 8 Planning Code of Practice, Council 20 January 2020

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=146&MId=897&Ver=4>

### **Other papers:**

- Revision to Constitution – Model Code of Practice for members in respect of Planning Matters, Council 20 February 2018

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=146&MId=401>

- Probity in planning - Advice to councillors and officers making planning decisions. LGA & PAS. December 2019

<https://www.local.gov.uk/probity-planning-advice-councillors-and-officers-making-planning-decisions>