

Planning Committee
18 January 2018

Planning Members' Code of Conduct, Public Speaking Rules, Delegation Scheme and Call-In Procedure

Report of the:	Head of Place Development
Contact:	Mark Berry
Urgent Decision?(yes/no)	No
If yes, reason urgent decision required:	
Annexes/Appendices (attached):	Annexe 1: Proposed "Model code of good practice for members in respect of planning matters" Annexe 2: Revised Delegation Scheme 2017
Other available papers (not attached):	Planning Improvement Action Plan – November 2017 Planning Improvement Peer Challenge Report – 30 October 2017 Current Code of Good Practice in Part 5 of the Council's Constitution Current Scheme of Delegation

Report Summary

The Planning Improvement Action Plan adopted at the 13 November meeting of the Planning Committee contains a number of actions that involve changes to the practices and procedures around the consideration and determination of planning applications. This report seeks the adoption of a new range of procedures that directly relate to the work of the Planning Committee. These take account of comments and recommendations in the Planning Peer Challenge report – October 2017 and of changes in the law and the latest advice on best practice from the Local Government Association and the Planning Advisory Service.

Recommendation (s)

That the Committee:

- (1) Adopt a revised “Model code of good practice for members in respect of planning matters” attached at Annexe 1 to supercede the (ACSeS) Model Code of Good Practice currently in the Constitution and recommend to Council that the Constitution be updated accordingly;**
- (2) Approve the revised Delegation Scheme attached at Annexe 2;**
- (3) Approve the revised Members’ call-in procedure set out in the revised Delegation Scheme;**
- (4) Approve the delegation of the determination of applications regarding small-scale developments on Council land to Officers unless such applications are outside the delegation scheme in operation at the time.**

1 Implications for the Council’s Key Priorities, Service Plans and Sustainable Community Strategy

- 1.1 Sound and defensible planning decisions reflect the Council’s core values and it is fundamental to all four of the Council’s key priorities to ensure that we have appropriate planning policies and that we can make sustainable decisions in the light of those.

2 Background

- 2.1 The Peer Challenge review team submitted their report on 30 October 2017. In response, the Planning Committee adopted a Planning Improvement Action Plan relating to the Development Management process at a special meeting on 13 November 2017 and a separate report is due to be considered by the Licensing and Planning Policy Committee on 7 December 2017 relating to the planning policy aspects of the Improvement Action Plan.
- 2.2 An associated Member/Officer Working Group to monitor the implementation of the plan has been approved.
- 2.3 Many of the actions in the plan have already been part-implemented or put in train. The timescales for implementation are challenging and many of the actions fell to be completed before Christmas. This report seeks to carry forward many of the procedural changes that are recommended in the Peer Challenge report which have been adopted in the Action Plan.

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3 Code of Good Practice

- 3.1 Part 5 of the Council's Constitution contains Codes and Protocols applying to various aspects of the Council's business, including a Planning Code of Practice entitled "Association of Council Secretaries and Solicitors (ACSeS) Model Code of Good Practice for Members regarding Planning Matters".
- 3.2 It is proposed to revise this "Planning Code", which was last updated in 2007. Subsequent to its adoption, the Localism Act 2011 attempted to address the issue of pre-determination in decision-making and made it clear that elected members do not have a 'closed mind' just because they have historically indicated a view on a matter relevant to the proposal. Members are to be encouraged to engage in the planning process at an early stage and our guidance needs to be up-dated to reflect this.
- 3.3 Under the heading: "The value of pre-application engagement", the National Planning Practice Guidance (NPPG) says that: "*Democratically elected members are strongly encouraged to participate at the pre-application stage, where it is appropriate and beneficial for them to do so.*" This is a major change from our current protocol that states: "*Don't agree to any formal meeting with applicants, developers or groups of objectors where you can avoid it.*"
- 3.4 Section 25 of the Localism Act recognises ongoing concerns of councillors nationally about the local effects of misunderstandings regarding predisposition and predetermination.
- 3.5 It is important that local residents and businesses can discuss views with those who represent them without concern that in doing so their representatives will be prohibited from actually representing them. Members can play a constructive role in pre-application discussions and in the earlier stages of a planning application before it is reported to committee.
- 3.6 Being able to hold meaningful discussions with local decision-makers also has benefits for developers, enabling them to understand what may or may not be acceptable before plans are elaborately developed. The process may save excessive and abortive costs.
- 3.7 The changes introduced by the Localism Act and the emphasis on encouraging "front-loading" of the planning process in the NPPG and the Peer Challenge report show that our existing code is out of date and in serious need of revision. A copy of the proposed revised Planning Code is to be found at **Annexe 1**.
- 3.8 In addition to the main thrust of the changes to the Planning Code, there is an important proposed change to the procedure for requesting site visits on Planning Committee items. For many years, the practice has been to determine site visit requests as a standing item on the Planning Committee agenda. This is not very logical and it makes sense for site visit requests to be fed to the Chair or Vice-chair outside of the committee cycle and for

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the Head of Place Development in consultation with the Chairman and Vice Chairman to determine which cases warrant a site visit according to the criteria clearly stated in the revised code. Attention is therefore drawn specifically to Section 12 of the proposed Planning Code.

- 3.9 Another significant change is to pick-up on a recommendation from the Peer Challenge team that minor planning proposals on Council land should not necessarily need to be referred to the Planning Committee for determination

4 Public speaking protocol

- 4.1 The Peer Review process also suggested that the issue of public speaking be revisited to ensure transparency and fairness. The current arrangement is that those wishing to speak at a particular committee meeting must register to speak between 6pm and 7pm on the evening of the meeting. The Peer Review commented that this is unusual but this system recognises the resources available to facilitate this.
- 4.2 Further consideration will be given to this matter. In the meantime, standard letters and conversations with applicants will make it clear that, should an application go to Committee, there is a possibility that an objector could ask on the night of the meeting to address the committee. Forewarning applicants or agents that this might be the case will give them the opportunity to consider whether or not to address the committee themselves. The promotion of the ability to speak at Committee generally will also be reviewed to raise its profile.

5 Revised Delegation Scheme (including revised call-in procedure)

- 5.1 The Peer Challenge Report recommends that the Planning Committee should focus on strategic and controversial decisions and that the proportion of cases dealt with under delegated powers should be maintained at a high level.
- 5.2 The revised Planning Delegation Scheme set out in **Annexe 2** has been framed in the same manner as the general Scheme of Delegation to Officers contained in the Council's Constitution under Part 3 where the approach is to empower officers to make decisions except in certain specified circumstances
- 5.3 Applications should only be "called-in" for good planning reasons and it is proposed to introduce refreshed disciplines around the use of the call-in power. An application should be capable of being "called-in" by any member of the Planning Committee or Ward member representing the Ward in which the development is taking place who has a legitimate planning reason for doing so. The request should be made in writing to the case officer and copied to the Head of Place Development and Planning Development Manager within 28 days of the date on which public notice is given of the application.

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5.4 However, there are certain types of application and notification that, because of their nature or statutory time limits, are not suitable for consideration by the Planning Committee. The revised delegation scheme lists these for the sake of clarity.

5.5 It is proposed that the revised planning scheme of delegation attached at **Annexe 2** should be adopted immediately.

6 Financial and Manpower Implications

6.1 There are no significant financial or manpower considerations arising from the proposals in this report.

6.2 ***Chief Finance Officer's comments: to follow***

7 Legal Implications (including implications for matters relating to equality)

7.1 The practices and procedures recommended in this report would bring the Borough Council's planning framework into line with the current best practice, the Localism Act and National Planning Practice Guidance (NPPG) in particular. In adopting the proposed measures, the Council would be complying with the recommendations of the Local Government Association and Planning Advisory Service.

7.2 Further consideration will be given to the public speaking protocol to ensure that it is fair and transparent.

7.3 ***Monitoring Officer's comments: the proposed practices and procedures are now more in line with current legislation and have taken on board the report resulting from the Planning Improvement Peer Challenge.***

8 Sustainability Policy and Community Safety Implications

8.1 There are no direct sustainability or community safety implications arising.

9 Partnerships

9.1 The proposed Planning Code will assist in more collaborative working with applicants within the appropriate bounds probity and will help to enable the engagement of other stakeholders earlier in the planning process.

10 Risk Assessment

10.1 The proposed changes to procedure will ensure that we are more in-line with current law. Indeed, the Peer Challenge Report asserts the importance of "front-loading" to ensure that there are more opportunities for Members to influence the planning proposals before they get anywhere near a planning committee meeting. This is positively encouraged by the Government.

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- 10.2 There could be a perceived risk of impropriety under the new planning code where members of the public think that discussions are happening behind closed doors and decisions are being unduly influenced by the access that applicants will have to elected Members. The proposed Planning Code therefore seeks to minimise that risk by ensuring that appropriate safeguards and restrictions are put in place and it adopts the best of mainstream practice in this regard.
- 10.3 The determination of Council planning applications under delegated powers is a departure from previous practice but any case that generates any significant issues can still be referred to Committee for consideration. There should not need to be a default requirement for referral of all such cases to Committee as in most cases they have historically related to very minor or inconsequential issues

11 Conclusion and Recommendations

- 11.1 The above-mentioned proposals pickup on many of the recommendations made in the Peer Challenge report. There is a clear need to up-date the Planning Code and to make adaptations to our procedures for Members' committee site visits, Council planning applications. The public speaking procedure will also be revisited to ensure that it is fair and transparent. The Planning Scheme of Delegation also needs to be brought up-to-date and the call-in procedure clarified.
- 11.2 The measures contained in the recommendation should therefore ensure that our processes are better able to deal with the demands of the time and assist the Council in making better informed and more sustainable decisions.

WARD(S) AFFECTED: (All Wards);