



Planning Committee

No Direct Ward Relevance

3rd November 2009

MEMBERS' PLANNING CODE OF GOOD PRACTICE

(Report of the Monitoring Officer)

1. Summary of Proposals

To consider a revised Planning Code of Good Practice for adoption by the Council as referred to this Committee by the Standards Committee.

2. Recommendations

The Committee is asked to RESOLVE that,

- 1) should no substantive changes be suggested to the draft Code, the Code be recommended to Council for approval; OR
- 2) should substantive changes be suggested, the draft Code be referred back to the Standards Committee for further consideration, prior to recommendation on to Council.

3. Financial, Legal, Policy Risk and Sustainability / Environmental Implications

Financial

- 3.1 There are no financial implications arising from this report.

Legal & Policy

- 3.2 Part III of the Local Government Act 2000 established an ethical framework for the conduct of Members. Sections 51 and 52 of the Act placed a duty on Local Authorities to adopt a Code of Conduct for Members and a duty on Members to undertake to comply with the adopted Code of Conduct respectively. The current Code of Conduct came into effect on 3rd May 2007.
- 3.3 The Council has adopted a Planning Code of Practice and this has been in place for some time. However, the Code needs to be updated to take account of the changing role of Members in the planning process.

Risk

- 3.4 If the Members' Planning Code of Good Practice is not adopted, there is a risk that Members will not be enabled to take their full role in planning matters, thereby stifling the Council's role as a place-shaper. There is also the risk that Members may compromise the Council's planning and decision-making process due to being unclear about what is or is not appropriate.
- 3.5 There is a risk that if a Member fails to comply with the Council's Codes of Conduct, a complaint could be made against them to the Council's Standards Committee or, in the most serious cases, to the Standards Board for England. There are a range of sanctions that can be imposed, depending on the nature and severity of the breach. In the most serious cases, breach of the Code of Conduct could lead to imprisonment.

Sustainability / Environmental

- 3.6 There are no sustainability, environmental or climate change implications arising from this report.

Report

4. Background

- 4.1 Earlier this year, the Local Government Association produced guidance entitled "probity in planning: the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters".
- 4.2 The guidance states as follows in its foreword:
- "Planning has a positive and proactive role to play at the heart of local government. It is a powerful tool that helps councils achieve the ambitions of local communities. Good planning stimulates growth and promotes innovation. It helps to translate goals for healthier communities, higher employment, better housing, reduced congestion, educational attainment, safe and sustainable communities into action through well-designed medical centres, offices, universities, homes, roads and other facilities vital to achieving them.
- 4.3 The planning system works best when the roles and responsibilities of the many players essential to its effective operation are clearly understood. It is vital that elected councillors and planning officers understand their roles and the context and constraints in which they operate.

- 4.4 Planning decisions involve balancing:
- a) the needs and interests of individual constituents and the community, with
 - b) the need to maintain an ethic of impartial decision-making on what can be highly controversial proposals.
- 4.5 The challenge of achieving the balance between these dual roles led the LGA to issue its original Probity in planning guidance note in 1997. However, since then a comprehensive ethical framework for local government was introduced following the Local Government Act 2000. A revised national code of conduct for councillors was introduced in 2007. Each authority is required to adopt a local code of conduct that sets out rules governing the behaviour of its members.
- 4.6 This 2009 update provides refreshed advice on achieving this balance in the light of such changes. It also better reflects local authorities' roles as place shapers and the enhanced role for councillors as champions of their local communities. It recognises councillors' ability to participate in discussions prior to the receipt of a planning application on behalf of their communities, and engaging in spatial planning policy formulation.
- 4.7 It provides advice on this following the Killian Pretty review's recommendations. It also advises on how to avoid predetermination or bias in decision making. Whilst the advice is designed primarily for officers and councillors involved in plan-making and development management, it will also assist scrutiny and standards committees dealing with planning matters.

5. **Key Issues**

- 5.1 The LGA guidance "Probity in Planning" *identifies* the key issues as set out in the following paragraphs: A lot has changed in expectations of the planning system in recent years and planning is moving to the heart of local authorities' place-shaping and community planning roles.
- 5.2 Councillors are encouraged to act as champions of their local communities and this requires creative and wide engagement. The guidance from the LGA is intended to facilitate the development of councillors' community engagement roles.
- 5.3 The Nolan report resulted in pressures on councillors to avoid contact with developers in the interests of ensuring probity. However in the place-shaping context, early councillor engagement is now positively encouraged to ensure sustainable development proposals can be harnessed to produce the settlements that communities need.

- 5.4 Planning decisions are not based on an exact science. Rather, they rely on informed judgement within a firm policy context. Decisions can be highly controversial as they affect the daily lives of everyone. This is heightened by the openness of the system (it actually invites public opinion before taking decisions) and the legal nature of the development plan and decision notices. It is important, therefore, that the process is characterised by open and transparent decision-making.
- 5.5 One of the key purposes of the planning system is to manage development in the public interest. In performing this role, planning necessarily affects land and property interests, particularly the financial value of landholdings and the quality of their settings. It is important, therefore, that planning authorities should make planning decisions affecting these interests openly, impartially, with sound judgement and for justifiable reasons. The process should leave no grounds for suggesting that a decision has been partial, biased or not wellfounded in any way.
- 5.6 Bearing in mind all these factors, it is not surprising that, from time to time, things can go wrong unless councils are on their guard. This is why the guidance is essential. The intention of the guidance is not to suggest that there is one best way of doing things. Local circumstances may well provide good reasons for local variations of policy and practice. However, each council should review the way in which it conducts its planning business, holding in mind the recommendations of the guidance.
- 5.7 The guidance refers to the actions of a planning committee of an authority, as the main decision-making forum on planning matters. However, it is recognised that authorities have developed a range of alternative forms of decision-making: area committees; planning boards, and of course, the full council itself - as the final arbiter in planning matters. It is important to stress, therefore, that the advice in this guidance note applies equally to these alternative forms of decision-making arrangements. Indeed, it becomes very important if the full council is determining planning applications referred to it, or adopting local development documents, that councillors taking those decisions understand the importance of this guidance. The guidance also applies to councillor involvement in any planning enforcement.
- 5.8 The revised guidance note is useful to both councillors and officers who become involved in operating the planning system - it is not therefore restricted to professional town planners and planning committee members. The successful operation of the planning system relies on mutual trust and understanding of each other's role.

It also relies on each ensuring that they act in a way which is not only fair and impartial but is also clearly seen to be so.

Draft Code

- 5.9 The draft Planning Code of Good Practice at Appendix 1 has been drafted in response to the LGA's guidance, to enable Members to safely take the proactive role in place-shaping and community planning.
- 5.10 The draft Code covers a number of areas where Members and Councils can get themselves into difficulties, such as the declaration of interests, fettering of discretion, contact with applicants, developers and objectors, lobbying of and by Members, site visits and decision-making.
- 5.11 Many of the complaints about Members made to local authority Standards Committees or to the Standards for England arise out of planning matters. Many of these relate to a failure to disclose personal and prejudicial interests, but also to improper use of position and bullying. The adoption of the draft Code will help to ensure that Members are aware of what is appropriate in a planning context, to avoid the risk of the Council's decisions being held to be invalid or unlawful.
- 5.12 The Standards Committee considered the proposed Draft Code at its meeting on 30th September 2009 and referred the Code on to the Planning Committee for its consideration.

6. Other Implications

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| Asset Management | - | There are no identified implications. |
| Community Safety | - | There are no identified implications. |
| Human Resources | - | There are no identified implications. |
| Social Exclusion | - | There are no identified implications. |

7. Lessons Learnt

Planning is one of the most controversial areas for Member decision-making and clear guidance is required for Members involved in the planning process to prevent them from falling foul of the rules.

8. Background Papers

Probity in Planning - : the role of councillors and officers – revised guidance note on good planning practice for councillors and officers dealing with planning matters” (Local Government Association, 2009)
Model Member Planning Code of Good Practice (ACSeS)

9. Consultation

There has been no consultation carried out in preparing this report.

10. Author of Report

The author of this report is Sue Mullins (Monitoring Officer), who can be contacted on extension 3210 (e-mail: sue.mullins@redditchbc.gov.uk) for more information.

11. Appendices

Appendix 1 – Draft Members’ Planning Code of Good Practice