

Report of the City Solicitor and the Assistant Director Planning, Highways and Transportation to the meeting of the Standards Committee to be held on 13th November 2013.

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Subject:

REVIEW OF THE PLANNING CODE OF CONDUCT

Summary statement:

This report sets out proposals and options for amendments to the Council's Planning Code of Conduct in the light of adoption within the Council's Constitution of a local Members Code of Conduct by Council. The proposed amendments also take account of the provisions of Section 25 of the Localism Act 2011.

Suzan Hemingway
City Solicitor
Julian Jackson
Assistant Director Planning
Report Contact: Frank Suadwa
Phone: (01274) 432183
E-mail:
frank.suadwa@bradford.gov.uk

Portfolio:

Environment and Culture

Improvement Committee Area:

Environment and Waste Management



1 SUMMARY

- 1.1 This report sets out proposals for amendments to the Council's Planning Code of Conduct after review of its contents and consultation with the Executive Portfolio Holder and the chairs of the Regulatory and Appeals Committee and the two Area Planning Panels. The proposed amendments reflect changes to the Council's local Members Code of Conduct with regard to the rules relating to members' interests and also endeavour to clarify issues of predetermination of planning matters in the light of section 25 of the Localism Act 2011. Miscellaneous other amendments have been made in the light of experience and to give greater clarity to the Code. The proposed revised Planning Code is attached in the Appendix to this report.

2 BACKGROUND

- 2.1 Part 2 of Chapter 5 of the Constitution contains the Members and Officers Planning Code, which gives members of this Committee advice on probity issues related to making decisions on town and country planning matters. The Planning Code does not form a part of the adopted Members' Code of Conduct but is a separate document, which is both supportive of the Members' Code of Conduct and the source of expanded guidance in the particular area of planning. The Planning Code is intended to provide advice to Members so as to minimise the prospect of legal or other challenge to decisions.
- 2.2 Following the provisions of the Localism Act 2011 relating to member Interests coming in to force, Council adopted a new local Member Code of Conduct in July this year. As a result, the existing Planning Code requires updating.
- 2.3 The Localism Act 2011 places requirements on Councillors to notify the Monitoring Officer of or to disclose at committee Disclosable Pecuniary Interests (DPI) and prohibits participation in the business of the Council where a Councillor has such an interest. The current list of DPIs is set out in the list attached to the Members' Code of Conduct.

3. DETAILS OF PROPOSED AMENDMENTS TO THE PLANNING CODE

- 3.1 The proposed amendments to part 3 of the Planning Code set out the circumstance where members who have a pecuniary interest in a planning matter as defined by the Members Code of Conduct would be required to register or disclose such an interest and not take any part in the processing or determination of the related planning matter. The proposed amendments to part 3 of the code also set out circumstances where planning members would be expected to disclose non-pecuniary interests where circumstances might give rise to a public perception that such a member's dealings with a planning matter may be governed not just by issues of the public interest.
- 3.2 Paragraph 4 makes a clear distinction between the implications of the member's code of conduct with regard to planning decisions involving an obligation to declare

members interests; and common law issues of predetermination and bias. Section 25 of the Localism Act 2011 recently clarified the law on members' predetermination in that it makes clear that the mere fact that a member has previously expressed views about a matter does not of itself amount in law to proving that they have closed their minds with respect to a final decision. The proposed revisions to the Planning Code however emphasise the need for planning members to exercise caution to ensure they both approach, and can be perceived to have approached, planning matters with an open mind.

- 3.3 Part 16 has been amended to give greater clarity as to how decisions taken at the Regulatory and Appeals Committee or Planning Panels should be taken in order to ensure transparency, fairness and compliance with the legal obligation to have regard to material planning considerations.
- 3.4 Part 17 of the proposed revised Code gives further clarity to how requests for site visits should be appropriately be considered by Planning Panels or by the Regulatory and Appeals Committee and the appropriate protocol for undertaking site visits.
- 3.5 Miscellaneous other minor amendments of a drafting nature or to add greater clarity to the Code have also been made.

5. **OPTIONS**

- 5.1 Members are asked to consider whether they support the proposed revised Members Planning Code of Conduct.

6. **FINANCIAL AND RESOURCE APPRAISAL**

- 6.1 Training initiatives will be facilitated through existing member training budgets.

7. **LEGAL APPRAISAL**

- 7.1 The Localism Act 2011 brought to an end the previous standards regime and enabled local authorities to adopt a locally determined code. The Council adopted a new Code in July 2013. The Localism Act, together with the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, introduced the new concept of "Disclosable Pecuniary Interests" (DPIs). Members are required to notify the Monitoring Officer of their DPIs and may not take part in a discussion or vote on any matter in which they have a DPI. Failure to do this, with reasonable excuse, is now a criminal offence. The Members Code of Conduct also requires Members with DPIs to withdraw from the room during a discussion on a matter in which they have a DPI.
- 7.2 Guidance from the Department for Communities and Local Government states that a member may not participate in any discussion or vote at any committee or subcommittee where have a disclosable pecuniary interest *relating* to any business that is or will be considered at the meeting. There are provisions in the Localism Act 2011 which permit a Member with a DPI to apply for a dispensation from the Council to allow the Member to take part in a discussion or vote.

- 7.3 DPIs include a member's (or their spouse or civil partner's) ownership of land (including the Member's home), employment, interests in contracts, trusts, professions or sponsorship. The full list of DPIs is set out in the Members Code of Conduct.
- 7.4 As a result of the above changes it is necessary to amend the Planning Code to replace advice on prejudicial and personal interests with advice on DPIs in relation to planning matters. Information is also included in the proposed code illustrating where it is appropriate for members to disclose non-pecuniary interests
- 7.5 In addition, since the existing Code was drafted there have been developments (both case law and provisions in the Localism Act) in the law on pre-determination and bias, and these have been reflected in the amended Code.
- 7.6 Adoption of a revised Code is within the powers of the Council to agree its own constitutional arrangements within the legislative framework regulating local government.

8. OTHER IMPLICATIONS

8.1 Diversity and Equality

Central to the Code of Conduct is the need to secure fairness and transparency of regulatory decision making.

8.2 Sustainability implications

Proposed review of planning decisions would give opportunities to review the local impact of planning decisions in addressing sustainability issues.

8.3 Community safety implications

No direct community safety implications

8.4 Human Rights Act

The Council must consider Human Rights implications when making planning decisions. A robust planning code of conduct should assist in ensuring proportionate and fair decision making.

8.5 Trade Union

None.

7.7 Ward Implications

The code sets out the rights and limits of ward members to engage in the planning process.

7.3 Greenhouse Gas Emissions Impacts

No direct implications.

9. NOT FOR PUBLICATION DOCUMENTS

9.1 None.

10. RECOMMENDATIONS

10.1 That Members note progress to date towards review and update of the Members Planning Code of Conduct contained in the Appendix to this report and instructs the City Solicitor to undertake further consultation with the relevant Portfolio Holder and Planning Chairs with a view to agreeing a finalised version for consideration by the Corporate Governance and Audit Committee for adoption by Council.

11. APPENDICE

11.1 Proposed revised Members Planning Code of Conduct

12. BACKGROUND DOCUMENTS

12.1 Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice

12.2 Department for Communities and Local Government Guidance on Openness and transparency on personal interests: guidance for councilors.