

Draft Minute
Corporate Governance & Standards Committee – 19 January 2023

**Review of Probity in Planning Local Code of Practice –
Handbook for Councillors and Officers**

The Committee noted that the Council had last reviewed the Probity in Planning - Local Code of Practice Handbook in April 2019. The Handbook formed part of the Council's Constitution and provided guidance for councillors and officers on their role and conduct in the planning process. The guidance included how councillors and officers should manage contact with applicants, developers and objectors or supporters. The purpose of the guidance provided in the document was to ensure that decisions made in the planning process were not biased, were taken openly and transparently, and based only on material planning considerations.

As part of its ongoing work reviewing various aspects of the corporate governance of the Council, the Corporate Governance Task Group appointed by this Committee had conducted a thorough review of the Handbook.

The draft revised Handbook, as recommended by the Task Group, was attached as Appendix 2 to the report submitted to the Committee.

Each part of the Handbook had been carefully reviewed to ensure that the document reflected the law, and current best practice. The Committee's attention was drawn to a separate review of the Planning Committee, which had been undertaken by an Executive working group, which examined a number of recommendations by the LGA /PAS Peer Review. Two of the recommendations had been the subject of discussion by both the working group and the Corporate Governance Task Group, namely the call-up process for referral of applications to Planning Committee by councillors, and the process for overturning officer recommendations on applications at Planning Committee meetings. There had been differences of opinion expressed on both these matters by members of both groups.

The Lead Councillor for Planning Development, Legal and Democratic Services commented that the proposed changes to the Member referral process would replace the current seven-day notice procedure. A more collaborative, and constructive, less sequential approach was proposed in which all ward members would have the opportunity to express concerns about specific applications and, where necessary, call-up the application for determination by the Planning Committee at the beginning, rather than at the end, of the 8-week determination period. The need for the change had been highlighted as a key recommendation of the Peer Review to help the Council accelerate the processing of planning applications and improve the Council's performance in determining non-major applications within the statutory 8-week period. The Lead Councillor commented that the current procedure was inefficient and not widely used in other Local Planning Authorities. It was noted that there was a very real possibility of the Council being designated by the Secretary of State for failure to adequately perform its function in determining non-major applications.

In considering the report and the draft revised Handbook, the Committee made the following comments and suggestions:

Proposed Call-up process:

- Councillors have always had the opportunity of discussing particular applications with officers where it was felt that issues needed to be brought to their attention. Concern that the proposed new process would not enable councillors to see the officer's report on an application before it was determined, and not having at that point the option of call-up to Committee, which would create a huge burden for councillors.
- The seven-day referral process had been in place for many years, including times when the Council was performing well in determining applications. The current poor performance cannot therefore be due to the seven-day referral process. In response, the Executive Head of Planning Development noted that there were a number of factors that had contributed towards the current situation in respect of the performance of the planning department, including an increase in the number of applications and the very severe staffing situation which officers were endeavouring to address. In addition, officers were looking at improving other processes and procedures to demonstrate to the Government that the Council was putting in place measures to improve the performance of the planning service in Guildford.
- In response to concerns that some councillors were not receiving the weekly notification of planning applications, and that Ash Parish Council had been asked to consider planning applications that had already been determined by officers, the Executive Head of Planning Development would investigate these matters.
- The Task Group had discussed extending the proposed period to allow a councillor to call-up an application to Committee from 21 to 25 or 28 days. Other councils' referral processes permitted councillors to call-up an application at the point at which the public/neighbour consultation has expired. If a Ward Councillor was limited to 21 days, they would not have enough time to see the comments from the public and to understand the facts about the application to enable them to consider a call-up to Committee.
- In response to a request for evidence of the number of applications that had been referred to Committee under the seven-day referral process, the Executive Head of Planning Development confirmed that of the 700 applications that councillors responded to under the seven-day referral process (in 2020), 15 had been referred to Committee at the request of councillors, and of those, seven had been overturned by the Committee.
- In response to concerns over the perceived short time period proposed for councillors to request a call-up, officers clarified that, under the proposed new referral process, councillors would have 21 days from the date of the weekly list, not from the date of validation, to submit a committee referral.
- Concerns were raised that some neighbours of adjoining properties were saying they had not received consultation notices so had no opportunity to comment on an application.
- If other changes were required to make the planning application process more efficient or effective, particularly in terms of ensuring that the public were aware of applications, these should be addressed as part of a wider review of the processes followed by the Planning Department. The Executive Head of

Planning Development commented that the Council's approach to public consultation on planning applications followed the statutory requirements. Officers were requested to keep details of notifications sent, to enable councillors to demonstrate this.

Given the contentious nature of the proposed change in the Councillor Call-up Process, as set out in Annex 3 of the draft revised Handbook, the Committee took a vote on whether it should support the proposed change. As there was an equality of votes and given that full Council would make the final decision on the change, the Committee felt that the balance of views should be reflected in its comments that would be passed, first to the Planning Committee at its special meeting on 7 February and, then to full Council at its extraordinary meeting on 22 February.

General:

- Request for a tracked changed version of the document so councillors can see the changes that were being proposed to the Handbook, together with a summary of the key changes.

Members' Interests

- Suggestion that examples of non-pecuniary interests be included in section 10 of the Handbook.

Member overturn process at the Planning Committee

- Concern that the proposed revised overturn process would require councillors to cite relevant planning policies in support of a motion to refuse an application contrary to officer recommendation, and possibly to have pre-determined themselves if they had prepared reasons for refusal and relevant policies in support of a motion to that effect in advance of the meeting. It was suggested that the Handbook should be clear in such circumstances whether a councillor wishing to overturn the officer recommendation should state the harm that the proposed development would cause in planning terms and the relevant policies as the basis to justify a refusal. In response, the Committee was advised that:
 - (a) Planning Committee members were entitled to have concerns about planning applications and to discuss those concerns with officers in advance of a meeting. Pre-determination would only arise where the councillor attends a meeting having already made up their mind how they were going to vote;
 - (b) relevant policies would be set out in the officer's report, which should assist a councillor seeking to justify an overturn by reference to those policies;
 - (c) the current overturn procedure at Planning Committee, as stated in the notes on the Committee's agenda, required the proposer of a motion to refuse an application contrary to officer recommendation to state the harm that the proposed development would cause, and the relevant policy(ies) to justify the motion, whereas the proposed procedure was less onerous

as the proposer of the motion would still be expected to state the harm, and provide the relevant planning policy(ies), “*where possible*”.

The Committee took a vote on whether it should support the revised procedure for councillors overturning officer recommendations at the Planning Committee, as set out in Annex 4 of the draft revised Handbook, which was carried.

Corporate duty to maintain division between promoter of development/ decision makers

- Whilst the Handbook sets out detailed rules for individual councillors having conversations with potential applicants or planning officers, and the need to keep notes of meetings etc., there was concern that there did not appear to be anything in the Handbook that applied similar rules in circumstances where the Council might be involved in the development of a planning application, not as a planning authority, but as a corporate entity. It was suggested that either the Handbook could be expanded to include the role of councillors on planning when they were acting in a corporate capacity, for example as a portfolio holder, and the role of the Council as a corporate body in relation to planning matters, or that it be included in a separate protocol or policy document. In response, officers explained that there were specific statutory rules that were applied including the steps to be undertaken to define particular roles to ensure that there was not a conflict of interests, with no person working across both sides. It was therefore suggested that a reference to these rules was included, rather than repeating them in full.

Officer obligations to observe impartiality

- Suggestion that the duty on councillors to act impartially at all times should also apply to officers, and that the requirement for officers to disclose interests where it is considered that those interests might affect their objectivity in respect of a matter, should extend specifically to a requirement that they take no part in any decision on that matter. The Committee was advised that professional codes of conduct applied to officers advising the Planning Committee in addition to the Council’s own Code of Conduct for Staff which required officers to provide impartial advice to councillors and the public. It was suggested that the professional code of conduct of RTPI could be mentioned, although not all planning officers were members of the RTPI.

The Committee

RESOLVED: That the Committee’s conclusions, comments and suggestions in respect of the draft revised Probity in Planning Handbook, as set out above, be forwarded to, and taken into consideration by, the Planning Committee at its special meeting on 7 February and full Council at its extraordinary meeting on 22 February 2023.