

Council Report

Ward(s) affected: All

Report of Joint Strategic Director: Transformation and Governance

Joint Strategic Director: Place

Author: John Armstrong

Tel: 01483 444102

Email: john.armstrong@guildford.gov.uk

Lead Councillor responsible: Tom Hunt

Tel: 07495 040978

Email: tom.hunt@guildford.gov.uk

Date: 22 February 2023

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

### **Executive Summary**

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

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

The draft revised Handbook, as recommended by the Task Group, is attached with tracked changes as **Appendix 1** to this report, with a clean copy attached as **Appendix 2**.

In summary, the key changes proposed are in respect of the following:

- Section 16: Pre-Application Discussions including Planning Performance Agreements
- Section 19: Councillor 'call-up' to Planning Committee
- Section 21: Planning Committee (particularly the procedure for dealing with Member overturns)

This report was also considered by the Corporate Governance & Standards Committee at its meeting held on 19 January 2023. The various comments and recommendations from the Corporate Governance and Standards Committee are set out in the draft minute from that meeting, which is attached as **Appendix 3**.

The comments and recommendations from the Planning Committee, at its special meeting on 7 February 2023, are set out in the draft minute from that meeting, which is attached as **Appendix 4**.

The changes to the Handbook proposed by both committees have been incorporated into the revised tracked changed and 'clean' drafts attached as **Appendices 1** and **2** respectively.

**Recommendation to Council:**

That the revised 'Probity in Planning Local Code of Practice Handbook for Councillors and Officers', attached as Appendix 2 to this report, be adopted.

Reason for Recommendation:

To provide revised, up to date and fit for purpose Probity in Planning guidance to councillors and officers, together with other relevant information on the planning process at the Council in a helpful handbook.

**Is the report (or part of it) exempt from publication? No**

**1. Purpose of Report**

1.1 The purpose of this report is to set out why the Probity in Planning – Local Code of Practice Handbook for Councillors has been reviewed, the process of the review and to highlight the changes that have been made. This report asks the Council to formally adopt the revised Handbook.

**2. Strategic Priorities**

2.1 The Council, as the local planning authority, has a key role in local development, redevelopment and implementation of the Local Plan in line with legislation and the National Planning Policy Framework. The Council must ensure that councillors and officers are properly supported with fit for purpose guidance that can provide confidence in the decision-making process and reassurance to local residents and businesses. This is consistent with the following values in our Strategic Framework (2021-2025):

- We will listen to the views of residents and be open and accountable in our decision-making
- We will ensure that our councillors and staff uphold the highest standards of conduct.

### **3. Background**

- 3.1 Probity in Planning guidance is provided by all local authorities, and it normally sits within councils' constitutions. There is no statutory requirement to provide such codes of practice, but it is good practice to have accessible, up to date guidance available to all decision makers. The guidance should be read alongside the Councillors' Code of Conduct, the Code of Conduct for Staff and the Protocol on Councillor/Officer Relations.
- 3.2 The Council's Probity in Planning – Local Code of Practice Handbook was last reviewed and updated in 2019.
- 3.3 Arising from a number of concerns raised by councillors following the 2019 elections in relation to ethical standards, communications, and transparency, the Corporate Governance and Standards Committee established a cross-party task group, including a co-opted parish representative and an independent member of the Committee, with a wide remit to consider, review and make recommendations in respect of these, and other corporate governance related matters.
- 3.4 The Task Group commenced its review of the Handbook in June 2022, and this followed consideration of a proposed protocol for Informal Presentations to Councillors by third parties relating to Development. The protocol was considered and endorsed by the Corporate Governance and Standards Committee at its meeting on 28 July 2022. The Committee agreed that the protocol should be appended to the revised Probity in Planning Handbook. This is attached as Annex 2 to the revised Handbook.
- 3.5 During its consideration of the review of the Handbook, the Task Group invited to its meetings the Chairman and Vice-Chairman of the Planning Committee, together with the then Head of Place and, latterly, the new interim Executive Head of Planning Development for the purpose of providing advice and guidance on key elements of the Handbook.
- 3.6 It was noted during the review that certain matters referred to in the Handbook were also part of a separate review being conducted by the Planning Committee Review Working Group which had been established by the Executive to consider the recommendations of the LGA Peer Review. These matters were the call-up process for referral of applications to Planning Committee by councillors, and the member overturn process. Whilst there was general agreement by the Task Group on many aspects of the review of the Handbook, it is acknowledged that there were differences of opinion on particular matters such as the call-up process.
- 3.7 The revised Handbook will be a useful tool for all councillors, particularly those newly elected following the Borough Council elections in May,

especially those who are appointed to the Planning Committee. A copy of the draft revised 'Handbook' is attached with tracked changes as **Appendix 1** to this report, with a clean copy attached as **Appendix 2**.

#### **4. Consultations**

- 4.1 The Interim Joint Executive Head of Planning Development, the Senior Planning Solicitor and the Monitoring Officer have reviewed this draft version.

#### **Corporate Governance & Standards Committee – 19 January 2023**

- 4.2 This matter was also considered by the Corporate Governance & Standards Committee at its meeting on 19 January. A copy of the draft minute in respect of this item is attached as **Appendix 3** to this report.

#### **Issues that have been addressed in the draft revised Handbook as a consequence of the consideration by the Corporate Governance & Standards Committee**

- (a) The Committee requested a tracked changed version of the document so councillors can see the changes that were being proposed to the current Handbook, together with a summary of the key changes. **Appendix 1** includes the tracked changes, and the Executive summary lists the key changes.
- (b) It was suggested that examples of non-pecuniary interests be included in section 10 of the Handbook. These are shown highlighted in yellow in both **Appendices 1** and **2**.
- (c) 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.

Regulation 64(2) of the Town and County Planning (Environmental Impact Assessment) Regulations 2017 (SI 2016 No. 571) ("the 2017 Regulations") provides that:

*"Where an authority....is bringing forward a proposal for development and that authority....will also be responsible for determining its own proposal, the relevant authority.... must make appropriate*

*administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons bringing forward a proposal for development and the persons responsible for determining that proposal.*

The purpose of these administrative arrangements is to ensure that:

- (i) the functions of the authority will be undertaken by identified persons provided with the necessary resources and acting impartially and objectively;
- (ii) any person acting or assisting in the handling of the planning decision is prevented from being involved in promoting or assisting in the promotion of the application and/or the development; and
- (iii) any person involved in promoting or assisting in the promotion of the development is prohibited from giving any instructions to, or putting any pressure upon, any person acting or assisting in the handling of the planning decision, or from attempting to do so.

This is vital to ensure that there is a clear process for handling planning applications which avoids any potential conflicts of interest or any perception of conflict and/or that the decision-maker has been influenced by irrelevant considerations.

At councillor level, it is recognised good practice to ensure that portfolio holders do not sit as members of the Planning Committee given the potential conflict of interest that is likely to exist in respect of the applications in respect of the Council's own developments, or developments which directly affect the Council's land or property. However, it is noted that currently there are three portfolio holders who are also substitute members of the Planning Committee.

Additional text has therefore been added to section 14 of the draft revised Handbook, which is shown highlighted in yellow in both **Appendices 1** and **2**.

- (d) It was suggested 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](#) (see para 3.1 et seq.) which requires officers to provide impartial advice to councillors and the public.

Additional text has been added to sections 8, 9, and 10 of the Handbook to reflect this. Again, this is shown highlighted in yellow in both **Appendices 1** and **2**.

### **Planning Committee – 7 February 2023**

- 4.3 As stated above, the ‘Handbook’ will be an essential tool for all councillors, but as it is directly relevant to the planning process and the operation of the Planning Committee, it was considered appropriate that the Planning Committee was afforded the opportunity of being consulted on it. The Planning Committee considered this matter at its special meeting on 7 February 2023, and its comments and recommendations are summarised in the draft minute attached as **Appendix 4**.

#### **Issues that have been addressed in the draft revised Handbook as a consequence of the consideration by the Planning Committee**

- (a) In relation to Annex 2 to the Handbook (Protocol for informal presentations to councillors relating to development), it was suggested that, where a request was refused (para 5), a copy of the refusal decision and reasons be also sent to the Lead Councillors with portfolio responsibility for Planning Development and Regeneration. Wording to that effect has been added to Annex and is shown highlighted in yellow in both **Appendices 1** and **2**.
- (b) It was suggested that the flowchart which had been included on the Late Sheets showing the Planning Application Journey be included in Annex 3 to the Handbook (Process for Councillor ‘Call-up’ to Planning Committee), in order to assist councillors’ understanding of that process. The flowchart has been included in **Appendices 1** and **2**.

### **5. Equality and Diversity Implications**

- 5.1 Public authorities are required to have due regard to the aims of the Public Sector Equality Duty (Equality Act 2010) when making decisions and setting policies.
- 5.2 There are no equality and diversity implications arising from this report

### **6. Financial Implications**

- 6.1 It is of vital importance that councillors and officers operate under the guidance issued in the revised Planning in Probity document to ensure the timeliness and quality of planning decision making. Failure to do so may lead to unnecessary and avoidable appeals or legal challenges, thus incurring potentially significant costs to the Council.

- 6.2 Changes to the member referral process, as recommended in this report and the report on the review of the Planning Committee elsewhere on this agenda, have the ability to improve financial performance by making the application process more efficient. However, failure to make these changes may have very significant adverse financial implications such as cost of appeals and the Council being designated for non-performance.
- 6.3 If the proposal to front load the member referral process, by removing the 7-day notice and replacing it with the proposed 21 day call up to Committee, is not adopted it will have a significantly adverse impact on the timely determination of applications, thus hindering the Council's ability to improve the speed of determination of non-major applications. This would reject Recommendation 7 of the PAS Committee Review 2020 (referred to in the other report on this agenda) and Recommendation 7 of the PAS Development Management Review 2022 (also referred to in the other report) and could lead to designation by the Secretary of State, which would have a significant impact both financially and reputationally on the Council.

## **7. Legal Implications**

- 7.1 The legal implications are set out in this report and in the draft revised Handbook. Reviews of this nature are worthwhile to ensure procedures remain updated, legally compliant and include best practice across the board from other authorities and agencies, e.g. the LGA and PAS.
- 7.2 As mentioned above, failure to ensure the timeliness and robust quality of planning decision making, may lead to unnecessary and avoidable appeals or legal challenges. In addition, these can in turn lead to added risk, reputational damage and Secretary of State intervention.

## **8. Human Resource Implications**

- 8.1 There are no human resource implications arising from this report

## **9. Climate Change/Sustainability Implications**

- 9.1 There are no climate change/sustainability implications arising from this report.

## **10. Summary of Options**

- 10.1 The Council may agree that the existing Probity in Planning – Local Code of Practice Handbook be retained if councillors consider it remains fit for purpose.
- 10.2 The Council may submit the matter back to officers, or the Task Group, for further revision if it considers it is still not fit for purpose after the recent review.

10.3 The Council may adopt the Probity in Planning Councillors' Handbook', with or without further amendment.

## **11. Background Papers**

[Current Probity in Planning – Local Code of Practice Handbook for Councillors](#)

## **12. Appendices**

Appendix 1: Proposed Probity in Planning – Local Code of Practice Handbook for Councillors and Officers (with tracked changes)

Appendix 2: Proposed Probity in Planning – Local Code of Practice Handbook for Councillors and Officers (without tracked changes)

Appendix 3: Draft Minute of the Corporate Governance and Standards Committee (19 January 2023)

Appendix 4: Draft Minute of the Planning Committee (7 February 2023)