

To: Council
Date: 22nd July 2019
Report of: Head of Law & Governance
Title of Report: Constitution – Members’ Briefings on Planning Matters

Summary and recommendations	
Purpose of report:	This report recommends changes to Part 24 (The Planning Code of Conduct) of the Council’s Constitution.
Key decision:	No
Lead Member:	Councillor Nigel Chapman
Corporate Priority	N/A
Policy Framework	N/A
Recommendation(s): That Council resolves to:	
1. Approve the proposed amendments to Part 24 of the Constitution	
2. Delegate authority to the Head of Law and Governance to amend the Constitution in line with the changes approved by Council.	

Appendices	
Appendix 1	Amended Section 24 of the Constitution with proposed amendments highlighted

Introduction and background

1. The Council’s Planning Committees are on occasion asked to consider planning applications comprising large and complex developments. To assist members in dealing with these applications and associated issues involving such matters as viability, it is considered that it would be helpful to provide members with informal briefings on those applications. Informal briefings on certain pre-application enquiries which may evolve into formal planning applications may also be considered to be necessary from time to time.
2. In order to facilitate these forms of briefings, it is proposed to expand and make more explicit the guidance which is currently contained in the Planning Code of Practice at paragraph 24.14 in the Constitution. The proposed amendments are set out with track changes in Appendix 1 to this report.

Financial implications

3. There are no financial implications arising directly from the report.

Legal issues

4. Informal briefings such as those proposed are acceptable provided that they take place within and in compliance with certain parameters. The amended guidance is being provided so that those parameters are clearly defined.
5. There no other legal issues arising from the recommendations contained in this report.

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Appendix 1

24. PLANNING CODE OF PRACTICE

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24.1 What does this code apply to?

This code applies to all planning decisions, whether they are taken by officers, area planning committees or the planning review committee. It also applies to the preparation of the Local Plan and other planning policy documents.

24.2 Training for Councillors

Councillors are required to attend training and updating sessions on planning issues every two years (election years) and will be told about any changes to the law or the Council's procedures.

24.3 Preparation of Planning Policy documents – Public Meetings

At public meetings Councillors should be careful to be neutral and to listen to all points of view. They should take care to express themselves with respect to all present including officers. They should never say anything that could be taken to mean they have already made up their mind before an application is determined.

24.4 Councillors' interests in planning applications

(a) Registering and declaring interests

The members' code of conduct requires councillors to register interests. See 22.4.

(b) Declaring interests

Section 22.4(d) states what Councillors must do if they have an interest in an item.

All matter of interests must be viewed within the context of the members' Code of Conduct as a whole and regard given to the perception of the public. If members have concerns about a potential interest, they should seek advice from the Monitoring Officer.

(c) Avoiding perception of bias

Councillors must listen to the advice of the Monitoring Officer if they may be perceived as having made up their minds in advance or having closed their minds to opposing viewpoints.

If a member is a Cabinet member or represents the Council on an outside body and the Council or the outside body is the applicant then particular care should be taken by the member to avoid the perception of bias.

24.5 Gifts and Hospitality

Councillors and officers should avoid receiving gifts or hospitality from anyone involved with a planning application. If gifts or hospitality are unavoidable, they should be kept to the minimum.

Officers should declare offers of gifts or hospitality in the Council's hospitality register as soon as possible, whether they accept them or not. The record of gifts and hospitality will be reviewed annually by the Monitoring Officer.

24.6 Need for Councillors to make up their minds at committee

When a planning application comes to committee, Councillors must weigh up all the relevant facts and make their decision at the meeting. They must not have already decided how to vote.

This means that Councillors need to be careful about anything they say before the committee meeting. Although they can start to form a view, they should never say anything that could give the impression they have already made up their minds. Councillors should not sign letters or petitions that support or oppose an application.

24.7 When Councillors go public

If a Councillor has publicly supported a particular outcome, it will be very difficult for them to appear to make up their mind at committee and they should not participate in the debate or vote. If a councillor believes they have pre-determined an application, they should make this clear at the beginning of the meeting and leave the committee table for that item. In such a situation the councillor may address the meeting as a ward member in the public speaking slot (see 24.17).

This is not the same as the need to declare a disclosable pecuniary interest. That is a separate requirement of the members' code of conduct. See 22.4 of the Constitution.

24.8 Lobbying

(a) Lobbying by Councillors

Councillors should not lobby each other on planning applications. Nor should they put pressure on officers to make a particular recommendation or do anything which compromises, or is likely to compromise, the officers' impartiality or professional integrity.

(b) Lobbying of Councillors

When they are lobbied, Councillors should be careful not to say anything that could give the impression they have already made up their mind. They should stick to advising on procedures and suggesting that the person writes to the Head of Planning and Sustainable Development with their views in order that the comments may be reflected in the officer's report.

If Councillors do express an opinion to objectors or supporters, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant arguments and taken into account all relevant material planning consideration at committee.

24.9 Whipping

Political groups must not whip planning decisions. Councillors must use their individual judgement when deciding how to vote.

24.10 Planning applications by Councillors and officers

(a) Officers not to act as agents

Officers must not act as agents for planning applications to the Council.

(b) Council's handling of applications

If a Councillor or an officer or any relation of theirs puts in a planning application to the Council, they must declare their relationship on the application form and not be involved in deciding it or try to influence it improperly. The same goes for applications where a Councillor is the agent.

If a Councillor is the applicant or the agent, they are likely to have a disclosable pecuniary interest under the members code of conduct and should take no part in the determination of the application.

Head of Planning and Sustainable Development Services will tell the Monitoring Officer about any applications by Councillors or officers and any applications where a Councillor is the agent. These applications will always be decided by an area planning committee, or if called in, the planning review committee, not by the Head of Planning and Sustainable Development. The committee report should be able to say that the Monitoring Officer confirms the application has not had any special treatment.

24.11 Planning applications by the Council

Applications by the Council will not get special treatment: the Council will decide them on planning grounds and will not take in to account how it could gain from giving or refusing permission. Council applications will always be decided by an area planning committee or if called in, the planning review committee, not by the Head of Planning and Sustainable Development.

The only exception to this is applications for prior approval under identified permitted development rights (see 5.3(b)) which have a 42 day deadline for the local planning authority to oppose. If incorporating a prior approval

application to the committee structure takes longer than 42 days for the application to be determined, then this will result in the development being allowed to proceed by default regardless of what the committee decides. In those circumstances the Head of Planning and Sustainable Development will determine the application.

24.12 Discussions before an application is decided

The following applies to discussions with an applicant before an application is put in or before it is decided. These include discussions over the phone, as well as meetings:

- (a) It should be made clear at the start that the discussion will not bind the Council.
- (b) Anyone taking part in the discussion should make it clear whether they are likely to be the decision taker.
- (c) Advice should be unbiased and consistent. It should be based on the local development framework and relevant facts.
- (d) A note should be made of any meeting, which will be included on the application file.
- (e) If the applicant so requests a follow-up letter should be sent, confirming what has been discussed.
- (f) At least two officers should attend any meetings that are likely to be contentious.
- (g) If Councillors have a meeting, they should take a planning officer with them. Meetings involving Councillors or officers should be recorded on the application file.
- (h) Councillors should not approach applicants to try to achieve planning gain or get a planning application changed.
- (i) Councillors should never say anything that would give the impression that they have already made up their minds in relation the matter.

24.13 Public meetings

At public meetings Councillors should be careful to be neutral and to listen to all points of view. They should never say anything that could be taken to mean they have already made up their mind.

24.14 Members' Informal Briefings

For complex and/or major applications or pre-application enquiries about forthcoming applications, where there are difficult or technical issues such as viability to consider, it may be appropriate to hold informal briefings for members before an application is submitted to the Council or before an application comes before a committee for formal consideration and determination.

The Head of Planning Services will decide whether an informal briefing is considered to be necessary in any case.

Such a practice is acceptable provided the following guidelines are adhered to:-

- Members should understand that an informal briefing is not the committee meeting and therefore no decisions will be taken at the briefing.
- The informal briefing is essentially a fact finding exercise to allow members to understand more about the proposal before an application is submitted to the Council or before formal consideration of the scheme at committee.
- Members can ask questions about the scope of the proposal and about any issues they do not understand but it is not a forum for debate or for stating opinions about the development and certainly not for members to declare how they will vote at the formal meeting.
- Whilst members can begin to form views about the scheme and certain aspects of it, it is important at this stage for members not to form firm views or to decide how they will vote at the committee meeting. If they do so, they will not be able to take part in the committee consideration and determination of the application as they will be deemed to have pre-determined the application and will have closed their minds.
- The meeting is not a public meeting and therefore members of the public, the press and, in the case of informal briefings which are considering specific applications as opposed to pre-application enquiries, the Applicant will not be present. It will also only be appropriate for members who are likely to sit on the determining committee, their substitutes and ward members to be present.
- If an informal briefing is being held about a pre-application enquiry, the Head of Planning Services will decide whether it would be appropriate to invite the Applicant to the first part of the briefing in order to present the proposals to members. After the presentation, a question and answer session can take place so that members can seek clarification of any issues arising. The Applicant will then leave the briefing to enable further questioning of officers to take place to aid clarification or to seek further information.

- A record will be kept of the fact that the meeting took place and who attended the meeting but formal minutes or notes of the meeting will not be made or published as this is not a formal committee meeting and no decisions will have been taken.
- Although attendance by members will be encouraged, non-attendance at informal briefings will not prevent their subsequent participation in deciding an application when it comes before a committee.

~~For complex applications it might be appropriate to hold a members' briefing before the application is determined by committee. Members' briefings will be open to all Councillors and the public and will be used by the applicant to provide information.~~

~~The purpose and limitations of the briefing are to be made clear at the outset and a full note of the meeting will be taken and placed on the application file and provided as part of the report to the decision making committee. Any discussion at a members' briefing has no more standing than any other pre-decision discussion. Such briefings are not part of and do not substitute for any part of the decision making exercise to be undertaken by the relevant committee.~~

24.15 Site visits

A site visit by a planning committee is only likely to be necessary if:

- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers

or

- issues relevant to the determination of the application can only be properly understood by seeing the site.

In considering a planning application the planning officers will decide whether a site visit by members is necessary, based on the above criteria, and if so will arrange the site visit. An individual member of the relevant planning committee can make a request for a site visit but it is the officers who will make the decision. If members of the relevant planning committee ask for a site visit at a committee meeting then the committee will decide.

When a site visit is requested by a member of the relevant planning committee justification for visiting the site should be judged on the criteria above.

The reasons why the site visit is requested will be recorded and kept on the file.

Site visits will only be attended by members of the relevant committee and supporting officers. Other people such as applicants, owners or members of the public will not be invited to attend site visits. Applicants or owners will only be present if they are required to give access to a site. Applicants or owners present must not be directly engaged by councillors and all councillor questions must be addressed to the accompanying officer.

Councillors should not seek or accept representations, either as a committee or as individual members, during the visit. Councillors should not comment on the application and will not take any decisions during a site visit but may ask questions of the officer or seek clarification, particularly about the layout of the site or the development and its surroundings, but not in relation to the merits of the application.

Beyond attendance, no formal notes will be recorded of a site visit. Members of an area planning committee or the planning review committee who do not attend a site visit are not precluded from taking part in the determination of the planning application to which it relates. A site visit is not a meeting of the committee and no decision may be made upon the application at a site visit.

If a member does make a site visit on their own then they should only do so from publicly accessible land

24.16 Officers' Reports to Committee

Reports should cover all the relevant points, including:

- material considerations
- relevant parts of the development plan
- the relevant planning history of the site.
- Reports should have a recommendation and a technical/professional assessment that clearly justifies it.

If the recommendation is contrary to the development plan clear reasons must be given identifying the material considerations justifying that development plan departure.

Oral reports should be rare and carefully minuted.

24.17 Committee members speaking in the public speaking slot

Committee members can choose to speak during the public speaking slot but they must notify the chair of their intentions before the meeting begins.

They cannot participate in determining the application. Once the matter has been concluded, the member can re-join the committee.

24.18 Members of the public passing messages to Members during the meeting

Messages should never be passed to individual committee members once the meeting has started. If there is a brief adjournment during the meeting, Councillors should not communicate with members of the public during this time as this gives the impression that they might be being influenced.

24.19 Determining an application

Committee members can only determine an application if they have been present throughout the whole presentation and debate. Members that arrive late or leave the room during the deliberation of an application can sit at the committee table but cannot participate in the debate or vote on the application.

When an application is considered over two meetings, only members that attend both meetings can vote on the application.

24.20 Planning conditions added at the meeting

When councillors suggest planning conditions that were not in the report, their wording should be settled and drafted prior to the relevant decision being made, conditions are an integral part of a grant of permission and should be imposed only where lawful and compliant with national policy. Members should receive advice from officers on whether the conditions suggested are compliant with government policy.

24.21 Decisions that depart from the development plan or officers' recommendations

If the officers recommend making a decision contrary to the development plan, they should give full reasons in the report.

If a committee is considering voting against the officers' recommendations, officers should be asked to explain any effect it might have.

If a committee goes against the officers' recommendation, it must be for planning reasons and these must be clear and convincing. The personal circumstances of the applicant are rarely enough. The reason must be established prior to the motion being voted on. A detailed minute of the reasons should be made and placed on the application file.

The wording of planning conditions to be imposed or the wording of reasons for refusal should be settled before the vote is taken.

24.22 Complaints and record keeping

The Council has a complaints procedure, which is on the website. To make complaints easy to investigate, records need to be complete and accurate. Every planning file should contain an account of events from beginning to end. It is important to record reasons for decisions, especially when they are taken by officers and there is no committee report.

The Head of Planning and Sustainable Development will monitor the quality of the Council's planning records.

24.23 Responsibility for this code

The Head of Planning and Sustainable Development and the Monitoring Officer have overall responsibility for this code. They will review how the code is working.