



## **North Devon Council**

Report Date: Thursday, 18 May 2023

Topic: Planning Code of Conduct and Review of the Scheme of Delegations

Report by: Senior Solicitor and Monitoring Officer

### **1. INTRODUCTION**

- 1.1. Each year Annual Council considers the Scheme of Delegations as provided in the Constitution as a standing item to ensure that it remains appropriate and up to date.
- 1.2. The Planning Code of Conduct has been revised to represent up to date national guidance and to ensure its inclusion in the published Constitution.

### **2. RECOMMENDATIONS**

- 2.1. That the Scheme of Delegations for the discharge of functions for the year 2023/24 as set out in Part 3 of the Constitution be adopted with the amendments as provided in Appendices 1 and 2 to this report.
- 2.2. That the revised Planning Code of Conduct as provided in Appendix 3 to this report be included in the Constitution in Part 5 and that this replaces the current Planning Code of Conduct as published on the Council's website.

### **3. REASONS FOR RECOMMENDATIONS**

- 3.1. To provide additional clarity to the exclusions from the delegated powers of the Head of Planning Housing and Health to make a planning decision in respect of a planning application made by a Member, an Officer (or their respective partners) or by the Council itself consistent with the revised Planning Code of Conduct.
- 3.2. To proceed with the resolution of the Governance Committee on 27 March 2023 that the Committee's Terms of Reference be updated as provided in Appendix 2 to this report, be recommended to Full Council for approval.
- 3.3. To ensure that the Constitution, and the delegated powers and Codes within it, remains up to date.

### **4. REPORT**

- 4.1. The Scheme of Officer Delegations was recently reviewed at the Council meeting on 20<sup>th</sup> July 2022 and further adjusted at the Council meeting on 22 February 2023 and so it is considered that, save as provided in 4.2 below, this remains up to date. Similarly, other delegations within Part 3 are also considered to be up to date.
- 4.2. On review, it is considered that the wording at paragraph 5.2.5(a)(iv) of Annexe 2 of Part 3 of the Constitution, which relates to the exclusion to the delegated power of the Head of Planning Housing and Health to decide planning applications, requires further clarity. In this case the exclusion

relates to where the Council itself, a Member (or their partner) or an Officer (or their partner) puts in a planning application. It is considered that the wording provided at paragraph 5.2.5(a)(iv), while acceptable, leaves the potential for quite wide interpretation which leads to the potential for inconsistency.

- 4.3. The proposed amendment to paragraph 5.2.5(a)(iv) is provided at Appendix 1 to this report. It is considered that this will provide additional clarity and transparency in terms of which planning matters fall outside of the Head of Planning Housing and Health's delegated powers and therefore must be referred to Planning Committee for a decision. This includes situations where a Member is, pursuant to their profession, involved in a planning application and likewise provides additional provision for officers who may not be in the "Planning Service" but are heavily involved with the planning process or otherwise exert influence over it.
- 4.4. The principle behind this exclusion being to ensure that the Head of Planning Housing and Health (and those he nominates to also hold this power in common with him) cannot be at risk of being influenced in the decisions that he takes.
- 4.5. The terms of reference, in Annexe 1 to Part 3 of the Constitution, for Governance Committee are reviewed annually. At the last meeting on 27 March 2023 the Committee reconsidered the wording in its terms of reference as regards its standards function, the Governance Committee being formed from an amalgamation of the former Audit Committee and Ethics Committee. As provided in the minutes of the Governance Committee, the amendment as proposed at Appendix 2 to this report will allow greater clarity as to what Members on Governance Committee should be considering in the context of its standards function.
- 4.6. The Planning Code of Conduct is published on the Council's website and is referenced in the Constitution but not included. It has not been reviewed for some time and has become inconsistent with the Members' Code of Conduct, which was replaced with the Local Government Association's model Code of Conduct in 2021.
- 4.7. The intention of having a Planning Code of Conduct is to reflect the increased potential for lobbying, pre-determination and conflicts of interest which it is advisable to address by a supplemental Code specific to the issues which are covered by the Council's role as local planning authority.
- 4.8. As with the Members' Code of Conduct, the proposed Planning Code of Conduct, as provided in Appendix 3 to this report, is based on the Local Government Association's most up to date edition of Probity in Planning. Accordingly this is recommended best practice for local planning authorities to follow. It works alongside the Members' Code of Conduct and the Employees' Code of Conduct, supplementing these Codes rather than replacing them. The intention of the new Planning Code of Conduct is to

create clearer guidance for Members and Officers alike and also greater transparency for members of the public to understand how the Council ensures that decisions are taken appropriately and lawfully. It is considered that this Planning Code of Conduct should be added to the Constitution in Part 5 along with the Members' Code of Conduct and the Employees' Code of Conduct.

## 5. RESOURCE IMPLICATIONS

5.1. There are none arising from this report.

## 6. EQUALITIES ASSESSMENT

6.1. There are no equalities implications anticipated as a result of this report, the intention being to amend existing constitutional documentation to increase openness and transparency as to how the Council takes decisions.

## 7. ENVIRONMENTAL ASSESSMENT

7.1. There are no environmental implications arising from this report.

## 8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

8.1.1. The commercialisation agenda: Not applicable

8.1.2. Improving customer focus: The proposed updates to the Constitution will remove inconsistencies and allow customers to better understand how the Council makes decisions and ensures that such decisions are fair and lawful.

8.1.3. Regeneration or economic development: Not applicable

## 9. CONSTITUTIONAL CONTEXT

9.1. Article 13.3.1(a) and Part 4 paragraph 1.1.6

## 10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

## 11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report:

- Constitution
- Local Government Association's Probity in Planning (2019 edition).

(The background papers are available for inspection and kept by the author of the report).

## 12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Simon Fuller, Senior Solicitor and Monitoring Officer