



North Devon Council

Report Date: Tuesday, 11 June 2024

Topic: Review of the Planning Code of Conduct

Report by: Simon Fuller, Senior Solicitor and Monitoring Officer

1. INTRODUCTION

1.1. The Council's Planning Code of Conduct needs to be reviewed in light of expert scrutiny of this document

2. RECOMMENDATIONS

2.1. To recommend to Full Council that the Planning Code of Conduct, in Part 5 of the Constitution, be amended as provided at Appendix 1

3. REASONS FOR RECOMMENDATIONS

3.1. To ensure that the Council's Constitution remains up to date with a suitable Planning Code of Conduct.

4. REPORT

4.1. On 3 April 2024 the Council received training from a highly experienced planning barrister, Tim Leader of St John's Chambers. During that training the barrister questioned elements of the Council's Planning Code of Conduct leading to this being subject to a full review.

4.2. The Council is required to publish and maintain a Constitution under section 37 of the Local Government Act 2000. By section 37(1)(d) it may contain such information (as is not already prescribed by law) as the Council considers appropriate. The Council has decided to include the Planning Code of Conduct in its Constitution. The Code thereby constitutes a formal and clear representation by the Council to the public contained in a document that has been adopted by the Council about the procedure officers and the Planning Committee will follow when making planning decisions. The public is intended and entitled to rely on the representations contained in the Planning Code of Conduct.

4.3. The key issue raised by Mr Leader was that, in line with the above, the Planning Code of Conduct is a set of rules which the Council must comply because this forms part of the Council's Constitution. What the Council has at present is a document based on the best practice guide Probitry in Planning from the Local Government Association. While this includes many sound bits of best practice guidance, it is excessive for a Code of Conduct. Not only this but it may open the Council up for legal challenge on what would be a technicality when it has, for instance, made a perfectly adequate decision in law but not followed the best practice guidance in its Code to the letter.

- 4.4. Alongside Planning's Service Manager, the Legal Team has fully reviewed the Planning Code of Conduct and has taken on board the comments made by Mr Leader in their review of the Planning Code of Conduct.
- 4.5. The proposed amendments were then presented to Cllrs Davies, Lane and Prowse as Chair and Vice-Chair of Planning Committee and relevant Lead Member respectively. Comments from these councillors were taken on board and incorporated into the Code and Cllr Davies has confirmed his approval of it.
- 4.6. The changes proposed are as set out in Appendix 2 which shows a tracked changes version of the Planning Code of Conduct so councillors can review specifically what is proposed to be changes with Appendix 1 being a clean copy version incorporating these changes and being recommended for adopted by Full Council in line with recommendation 2.1 above.
- 4.7. Councillors will note that the changes made throughout are to:
 - 4.7.1. Correct minor but important errors (for instance at paragraph 6 the provision is made applicable to discussions before a decision is taken rather than only at the pre-application stage as was erroneously included in the current Planning Code of Conduct; and
 - 4.7.2. Reflect the position at paragraph 4.3 of this report, namely that this is guidance as opposed to being necessary for inclusion in the Planning Code of Conduct. For instance the changes at paragraph 9 of the Code move away from a councillor being compelled to give full and informed reasons from departing from an officer recommendation. The reason for this is that while it is certainly best practice that a councillor is well informed with planning reasons for moving a motion to depart from the officer's recommendation, they should not be compelled to be by the Code provided (as the Code provides) the Committee can agree and record suitable reasoning on taking appropriate advice from officers present (and may wish to adjourn for this purpose).

5. RESOURCE IMPLICATIONS

- 5.1. None.

6. EQUALITIES ASSESSMENT

- 6.1. The Constitution and the Planning Code of Conduct within it ensures that the Council makes decisions appropriately and in compliance with law, including equality law. The proposal in this report has no relevance to equalities and the protected characteristics given that it amends internal requirements officers and councillors must follow to make lawful decisions rather than pertaining to the decisions themselves.



7. ENVIRONMENTAL ASSESSMENT

7.1. There will be no environmental implications as a result of the proposals in this report. While planning decisions may affect the environment this is an amendment to the procedures that officers and councillors must follow when dealing with planning matters rather than how these should be decided.

8. CORPORATE PRIORITIES

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

8.1.1. The commercialisation agenda: None.

8.1.2. Improving customer focus: updating the Planning Code of Conduct will ensure that the Council publishes a Code that is fit for purpose allowing customers to see the processes that the Council must follow.

8.1.3. Regeneration or economic development: None.

9. CONSTITUTIONAL CONTEXT

9.1. Save as provided in paragraph 9.2 below, the decision in respect of the recommendations in this report can be made by this Committee pursuant to delegated powers provided in Part 3 Annex 1 paragraph 5 of the Constitution.

9.2. As noted in the report, the power to decide on one or more of the recommendations in this report is reserved to Council pursuant to Article 4.5.1 and as such the recommendation must be referred to Council to ratify.

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: (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