

STANDARDS COMMITTEE

24 OCTOBER 2024

REPORT OF THE MONITORING OFFICER

A.2 REVIEW OF TENDRING DISTRICT COUNCIL'S MEMBERS' PLANNING CODE AND PROTOCOL

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To enable the Committee to consider the results of the review of the Planning Protocol carried out by the Monitoring Officer and her team.

To seek the Committee's approval that members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons be consulted on the draft revised Planning Probity Protocol.

EXECUTIVE SUMMARY

In December 2019, the Local Government Association (LGA) issued its Probity in Planning Guidance – Advice for Councillors and Officers making planning decisions. The Standards Committee agreed through its work programme to review the Council's Planning Code & Protocol following the LGA publication.

Following the 2020/21 review no further changes were suggested as a result of the LGA's guidance however, additional wording was recommended to cover situations when it is not possible to undertake Site Visits and to clarify this does not impact upon the Planning Committee's ability to determine planning applications.

At its meeting held on 19 July 2023, the Committee decided amongst other things that a review of the Council's Planning Code and Protocol be carried out to ensure it was adhering to best practice and easy to follow. The review conducted has researched the various examples suggested by Planning Advisory Service (PAS) as best practice and the outcome has resulted in a revised approach with the first step being to refer to the document as the 'Planning Probity Protocol'. This also aligns with the Planning Probity Protocol adopted for the Tendring Colchester Borders Garden Community Joint Committee.

This report sets out initial proposals following a review by the Monitoring Officer and following consideration by the Committee, seeks approval to consult with members of the Planning Committee, Portfolio Holder for Housing and Planning, Planning Officers and the Independent Persons on the draft revised Planning Probity Protocol.

RECOMMENDATION(S)

It is recommended that:

- a) The Committee notes the outcome of the review of the Planning Protocol carried out by the Monitoring Officer;
- b) subject to the outcome of the Committee's debate on the contents of the draft Planning Probity Protocol, as set out in Appendix A;
- (c) approves that consultation be undertaken on the draft revised Planning Probity Protocol; and
- (d) subject to (b), the outcome of the consultation be report back to the Standards Committee for consideration prior to recommendation onto Full Council for adoption.

REASON(S) FOR THE RECOMMENDATION(S)

In order to enable the necessary consultation to take place with relevant parties on the draft revised Planning Probity Protocol.

ALTERNATIVE OPTIONS CONSIDERED

Not to proceed any further with the review. However, this would equate to a missed opportunity to refresh the Protocol and to produce a more user-friendly document following recognised best practice.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The Members' Planning Code and Protocol forms part of the Council's Constitution in Part 6 and demonstrates effective and positive Governance arrangements and promotes the maintenance of integrity, both real and perceived within the Planning Committee's decision making as well as high standards of conduct.

The Council has approved and adopted a Local Code of Corporate Governance, which is consistent with the principles of the **CIPFA / SOLACE *Delivering Good Governance in Local Government Framework (2016 Edition)***. The principles and standards set out in the 2016 Framework are aimed at helping local authorities to develop and maintain their own codes of governance and discharge their accountability for the proper conduct of business.

The first principle of the CIPFA/Solace Framework – Principle A expects local government to give on-going assurance (through its Annual Governance Statement) that it is "*Behaving with integrity, demonstrating strong commitment to ethical values and respecting the rule of law*".

The Role of the Standards Committee within the governance environment is to:

- Promote and maintain high standards of conduct
- Develop culture of openness, transparency, trust and confidence
- Embed a culture of strong ethical and corporate governance

Corporate governance is about how we ensure that we are doing the **right** things, in the **right** way, for the **right** people in a timely, inclusive, honest and accountable manner.

Keeping under review and updating its protocols demonstrates the Council's commitment to ensuring good governance sits at the core of its arrangements and culture.

LEGAL REQUIREMENTS (including legislation & constitutional powers)

- The determination of a planning application is a formal administrative process involving:
 - the application of national and local planning policies
 - reference to legislation, case law and rules of procedure
 - rights of appeal and an expectation that local planning authority will act transparently, reasonably and fairly
- In making any determination under the Planning legal framework, Members of the Council sitting on the Planning Committee should ensure decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise (see [section 70\(2\) of the Town and Country Planning Act 1990](#) and [section 38\(6\) of the Planning and Compulsory Purchase Act 2004](#) – these provisions also apply to appeals). Members must do so by balancing the needs and interests of the whole community and of individual constituents, alongside the need to maintain an ethic of impartial decision making on what may be highly controversial proposals.
- Planning Probity Protocols aim to ensure that in the planning process there are no grounds for suggesting that a decision is biased, is not impartial or not well founded in any way.
- Planning legislation and guidance can be complex. The Local Government Association, the Committee for Standards on Public Life and the Royal Town Planning Institute all recommend Members who have to make planning decisions should be specifically trained and provided with general guidance for Planning in Probity.
- The National Planning Policy Framework represents up-to-date government planning policy and is a material consideration that must be taken into account where it is relevant to a planning application or appeal. This includes the presumption in favour of development found at [paragraph 14 of the Framework](#). If decision takers choose not to follow the National Planning Policy Framework, where it is a material consideration, clear and convincing reasons for doing so are needed.

Challenges to Local Planning Authority decisions is via a Judicial Review which is defined in Part 54 of the Civil Procedure Rules as the process by which the court will review the lawfulness of an enactment, decision, action or failure to act in relation to the exercise of a

public function. This often relates to planning decisions and actions by local planning authorities (LPAs) and the Secretary of State, which can be challenged in the courts by way of judicial review if the decision made was unlawful.

The focus of the judicial review is to consider the legality of how a decision was made or action was taken by a public body in the exercise of a public function. Judicial review cannot be used to review the merits of a decision.

In principle, judicial review can be used to challenge any act or omission by a public body, whereby the decision made is in the “public interest”. A judicial review claim will seek to demonstrate that the public body’s action falls within one or several of the below heads of claim:

- **Illegality** – where the decision-maker has failed to understand correctly the law that regulates its decision-making power and/or has failed to give effect to it.
- **Irrationality** – where a decision is so outrageous in its defiance of logic or of accepted moral standards that no sensible person giving due consideration to the matter in question could have arrived at such a result.
- **Procedural Impropriety** – (also referred to as a breach of natural justice), where, in making a decision, basic rules of natural justice were ignored, or where there was a failure to act with procedural fairness towards a person or to observe procedural rules that are expressly laid down by legislative instrument.

Common grounds for judicial review planning claims:

- Misinterpretation or misapplication of policy – A failure to correctly interpret and/or apply planning policy. This is usually formulated as an irrationality or illegality challenge. A decision-maker will open themselves up to challenge if they have failed to regard a policy in the development plan which is relevant to the application or have failed to properly interpret it.
- Material considerations – Failure by a decision-maker to have regard to a material planning consideration or the taking into account of a consideration which is not a material planning consideration. Such a ground is usually formulated as an illegality challenge, on the basis that it constitutes an error of law. A variant of this is the allegation that a decision-maker was misled by the planning officer about material considerations, often due to an unclear report or advice to the council which fails to understand the important issues that bear on the decision.
- Failure to give reasons/inadequate reasons – A failure to give reasons for a planning decision where required by statute or by the common law, and/or the inadequacy of reasons given for a decision. This is usually formulated as a procedural impropriety or illegality challenge.
- Failure to comply with EIA Regulations, SEA Regulations and/or Habitats Regulations – Where a decision has an environmental impact, it may be that the decision-maker failed to comply with a particular aspect of the legislative regime requiring environmental impact assessment, strategic environmental assessment and/or habitats regulations assessment. A challenge of this nature usually falls under the irrationality standard.

Consequently, a Planning Probity Protocol is intended as guidance and a statement of good practice for all councillors and officers involved in the administration or operation of the planning process (including planning enforcement).

FINANCE AND OTHER RESOURCE IMPLICATIONS

None associated with the content of this report.

USE OF RESOURCES AND VALUE FOR MONEY

External Audit expect the following matters to be demonstrated in the Council's decision making:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;

B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and

C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.

As such, set out in this section the relevant facts for the proposal set out in this report.

The following are submitted in respect of the indicated use of resources and value for money indicators:

A) Financial sustainability: how the body plans and manages its resources to ensure it can continue to deliver its services;	N/A
B) Governance: how the body ensures that it makes informed decisions and properly manages its risks, including; and	Key messages from local government failures include the absence of the right culture and understanding of the Nolan Principles and the need for greater transparency in decision making. The proposed Planning in Probity Protocol builds on the Council's existing culture of embedding the Nolan Principles within the way services are delivered, and decisions are made.
C) Improving economy, efficiency and effectiveness: how the body uses information about its costs and performance to improve the way it manages and delivers its services.	N/A

MILESTONES AND DELIVERY

Standards Committee 19 July 2023 – Agreed to undertake review.

Standards Committee 24 October 2024 – Consider the outcome of the review and make recommendations to Full Council.

Planning Committee November/December 2024 – undertake consultation with Members of the Planning Committee, the Portfolio Holder for Housing and Planning, Planning Officers and Independent Persons.

Report outcome of consultation to Standards Committee in February 2025 for consideration of recommendation onto Full Council.

Full Council March 2025 – Council considers and adopts the proposed new Planning Probity Protocol.

ASSOCIATED RISKS AND MITIGATION

The Council must ensure that any Codes and Protocols which provide guidance for Councillors are up to date with current policy, legislation, case law, good practice and national guidance. The current Members' Planning Protocol was last reviewed in 2023, prior to this review, following the LGA's publication to minimise any risk that the Council's practices were not up to date. Up to date guidance and easy to follow, prevents confusion and legal challenges by way of judicial review to planning decisions based on failure to declare interests, predetermination or bias.

OUTCOME OF CONSULTATION AND ENGAGEMENT

Possible consultees include:-

Members of the Planning Committee;
Portfolio Holder for Housing and Planning;
Planning Officers; and
The Independent Persons.

EQUALITIES

Part of the review of the Planning Protocol has been to ensure that it meets the requirements of the Public Sector Equality Duty in that the Council must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

The protected characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex, sexual orientation.

SOCIAL VALUE CONSIDERATIONS

Not applicable to this report.

IMPLICATIONS FOR THE COUNCIL'S AIM TO BE NET ZERO BY 2030

Not applicable to this report.

OTHER RELEVANT IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder

None

Health Inequalities	None
Area or Ward affected	All
ANY OTHER RELEVANT INFORMATION	
<p>In undertaking the review, the LGA's Planning Advisory Service (PAS) guidance on Planning Committee Protocols has been considered, which outlines some of the best practice across the country. The LGA's Probity in Planning guidance suggests individual Planning Codes and Protocols are produced. Tendring District Council's current Members' Planning Code and Protocol followed the format of the Lawyers in Local Government (LLG) Members Planning Code of Good Practice, which has recently been reviewed but with little amendments. Looking to undertake thorough research over the suggested best practice of other Councils, a new document for Tendring District Council has been produced for Members consider and consult on and consequently, adopt as best practice.</p>	

PART 3 – SUPPORTING INFORMATION

BACKGROUND
<p>At its meeting held on 19 July 2023, the Committee was informed that through the production of the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee in 2022 (attached Appendix C) a different format had been adopted, which was considered easier to follow. In addition, the Planning Advisory Service (PAS) through their website outlines some of the best practice they have found to assist Councils in reviewing their own codes of practice. Various examples are suggested for different elements, such as councillor involvement in pre-application advice, interests, lobbying, dealing with petitions, officer member relationships, ward councillor involvement, site visits, referral of delegated applications to Planning Committee, public speaking, training etc.</p> <p>Consequently, the Committee had agreed that rather than simply add wording to an existing Protocol, a fresh review would be undertaken of the document.</p>
PREVIOUS RELEVANT DECISIONS TAKEN BY COUNCIL/CABINET/COMMITTEE ETC.
<p><u>Standards Committee 19 July 2023 – Minute 6</u></p> <p>“RESOLVED that -</p> <p><i>(a) the contents of the Monitoring Officer’s Report and the fact that the Site Visit procedure was included within the recent mandatory training to Planning Committee Members, their substitutes and that this was available to all Members of the Council, be noted;</i></p> <p><i>(b) the different approach adopted for the Planning Probity Protocol for the Tendring Colchester Borders Garden Community Joint Committee, and that the Planning Advisory Service suggests some best practice for Planning Committee Protocols following the LGA’s Probity in Planning Guidance, be also noted; and</i></p> <p>(c) a review of the Council’s Planning Protocol be carried out to ensure that it is adhering to best practice and easy to follow.”</p>

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

[A2 Review of Planning Code & Protocol.pdf](#)

[Minutes Template \(tendringdc.gov.uk\)](#)

[Part 6 Codes and Protocols - Codes and Protocols \(tendringdc.gov.uk\)](#) – Part 6.49 – 6.58

[A2 Appendix A - LGA Probity in Planning December 2019.pdf](#)

[Planning Committee Protocols | Local Government Association](#)

[LLG background paper.pdf](#)

APPENDICES

Appendix A: New TDC Planning Probity Protocol.

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