



Leicester
City Council

WARDS AFFECTED
All Wards

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

PLANNING AND DEVELOPMENT CONTROL COMMITTEE
STANDARDS COMMITTEE
CABINET
COUNCIL

14TH JULY 2009
15TH JULY 2009
1ST SEPTEMBER 2009
3RD SEPTEMBER 2009

**REVISIONS TO CODE OF PRACTICE FOR MEMBER INVOLVEMENT IN
DEVELOPMENT CONTROL DECISIONS**

REPORT OF THE DIRECTOR OF LEGAL SERVICES

1. PURPOSE OF REPORT

This report is to enable the necessary approvals to be given for further revisions to be made to the Council's current Code of Practice for Member Involvement in Development Control Decisions.

2. SUMMARY

- 2.1 So as to maintain the integrity of Member involvement in the development control decision-making process that the Council has an up-to-date Member Code of Practice. The Council's current Code of Practice was last revised in 2007 and further changes are now required.

3. RECOMMENDATIONS

3.1 Planning and Development Control Committee

The Committee is asked to approve the revisions proposed by officers and make any comments and delegate to the Director of Legal Services and the Director, Planning and Economic Development, in consultation with the Chair and Vice-chair, to undertake any further amendment arising from the committee's consideration and comments from the Standards Committee prior to the final version of the Code being submitted to Council.

3.2 Standards Committee

The Committee is asked to note the proposed revisions and comments of the Planning and Development Control Committee and confirm its agreement to the revised Code of Practice being submitted to Council.

3.3 Cabinet

3.3.1 Cabinet is asked to recommend to Council the approval of the revised Code of Practice contained at Appendix 1 (which incorporates further amendments in relation to the comments of the Planning and Development Control and Standards Committees) to come into effect from 7th September 2009 and to delegate authority to the Director of Legal Services, in consultation with the Chair and Vice-chair of the Planning and Development Control Committee, to make any further amendments to the Code should this be required in consequence of future changes to the statutory Model Code of Conduct.

3.3.2 Council is also asked to delegate to the Director, Planning and Economic Development, in consultation with the Chair of the Planning and Development Control Committee and Director of Legal Services, preparation and finalisation of councillor guidelines to cover the situation where Members, as part of their community role, engage in pre-application discussions in relation to major planning applications linked to regeneration issues or any significant ward applications.

4. REPORT

4.1 The Code was last revised in 2007. Since then the following developments have taken place:

4.1.1 There have been further High Court decisions that touch on local authority planning decision-making.

4.1.2 The Local Government Association have re-issued their "Probity in Planning" document which makes reference to the importance of a local code of planning good practice. I will be arranging to circulate to all Members of the Planning and Development Control Committee a copy of the recently reissued document "Probity in Planning".

4.1.3 The "Probity in Planning" document includes a section on pre-application discussions and the role of members in this part of the planning process. There is potential for conflict in relation to probity issues if Members who are also decision-makers are seen to be actively taking part in formulating and agreeing proposals. In such circumstances, they would clearly have a predetermined view and so would not be able to be a decision-maker. Government guidance has recently been issued – Councillor Involvement in Pre-application Discussions – and on the basis of this, to ensure Members can have a role without prejudicing

those Members who have to make decisions, it is suggested that delegation be given to officers to prepare a pre-application discussions protocol.

- 4.1.4 The Council's Standards Committee (the Committee Chair and the independent members) have reviewed the training provided to members of the Planning and Development Control Committee and also have observed the committee "in action".
 - 4.1.5 The Government's response to the recent Killian Pretty Review on the planning applications process in relation to the role of elected members.
 - 4.1.6 The Government commented last year on the Member Code of Conduct. At the time of preparing this report there has been no announcement about any further changes. Delegated Authority is being requested to be given to the Director of Legal Services, in consultation with the Chair and Vice-chair of the Planning and Development Control Committee, to make any further amendments to the Code of Practice should this be required.
- 4.2 In order that the Code remains up to date, it is therefore timely to look at it critically to ensure that it remains fit for purpose, and as a result of work undertaken by the Head of Planning Management and Delivery and Head of Litigation further changes are now being suggested.
- 4.3 The revised Code is appended at Appendix 1. The key suggested changes are:
- 4.3.1 To reflect the Council's role as a place-shaper in terms of the spatial planning approach. Paragraph 1.5 has been amended and there is a new paragraph 1.7 making it clear that in reaching decisions the Committee has to consider, in the planning context, the wider public interest.
 - 4.3.2 To make a clear cross-reference to the statutory Model Code of Conduct (paragraph 1.6).
 - 4.3.3 To change the current practice that allows a Committee Member, who has been involved with a particular matter that is the subject of a committee report and who wishes to make representations, from participating as a Committee Member at the meeting at which the report is to be discussed – paragraph 4.2. In such circumstances, while the Committee Member could still come along to the committee as a Ward Member and make representations, a substitute (a fully trained Member) would be needed to replace the Member concerned on the committee.
 - 4.3.4 To ensure that where a Ward Member attends committee s/he makes the necessary declarations (paragraph 7.6).
 - 4.3.5 Where Members are proposing to make a decision contrary to the officer recommendation, before the vote is taken the Chair will clarify the planning reasons (paragraph 10.1).

4.3.6 To pick up the Killian Pretty recommendation that local authorities should review and update their schemes of delegation so that the committee work is focussed on applications of major importance or wider significance and that a minimum delegation rate to officers of at least 90% is achieved by all councils before the end of 2009 and to ensure planning reasons are given by Members who wish matters to be considered by committee (paragraph 12.1).

4.3.7 There are also a number of minor amendments in relation to headings, etc.

4.3.8 Appendix 1 now contains further minor amendments to take account of comments made by the Planning and Development Control and Standards Committees. Specifically, the paragraphs that have been further amended are 4.4, 6.4 and 9.1.

4.4 Consultation by the Government has concluded in relation to possible amendments to the statutory Model Code of Conduct. At the time of writing the Government's response is not to hand. Delegated authority to the Director of Legal Services is being recommended so that dependent on revised regulations any necessary/consequential amendments to the Council's Code of Practice can be made.

4.5 Formal approval of the Code under the Council's Constitution is via the Standards Committee and Full Council. The proposed changes to the Code were discussed at officer level and initially with the Chair and Vice-chair of the Planning and Development Control Committee in the municipal year 2008/09 and more recently in the municipal year 2009/10. The proposed changes to the Code have also been forwarded to Group Whips.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1 Financial Implications

There are no direct financial implications arising from this report
(Steve Charlesworth, Head of Strategy & Development, x297495)

5.2 Legal Implications

Covered in the report.

6. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References Within Supporting information
Equal Opportunities	NO	
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	
Elderly/People on Low Income	NO	

7. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Relevant legislation, court decisions, national policies and guidance – Local Government Association’s “Probity in Planning” document and Department for Communities and Local Government’s “Government’s Response to the Killian Pretty Review”.

8. CONSULTATIONS

Cllr Patrick Kitterick, Cabinet Lead, Regeneration
 Andrew L Smith, Divisional Director, Planning
 Mike Richardson, Head of Planning Management and Delivery

9. REPORT AUTHOR

Anthony Cross, Head of Litigation, Legal Services, x296362

10.

KEY DECISION	REASON	APPEARED IN FORWARD PLAN	EXECUTIVE OR COUNCIL DECISION
NO	NOT APPLICABLE	NOT APPLICABLE	COUNCIL