



## Report of Chief Planning Officer

### Standards Committee

Date: 16<sup>th</sup> December 2008

**Subject: Annual Report Regarding the Code of Practice for Determining Planning Applications for the 2007/2008 Municipal Year**

#### Electoral Wards Affected:

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

## Executive Summary

1. This report is the Chief Planning Officer's annual report to the Standards Committee in relation to the Code of Practice for the Determination of Planning Matters. It highlights issues requiring amendments to the Code of Practice and the significant further progress of Panel.
2. One amendment is proposed to the Code of Practice for the Determination of Planning Matters, as it is proposed that the need to report back on permitted departures is not pursued on future annual reports.
3. The annual report shows that the existing Code of Practice for the Determination of Planning Matters is working well. Where there are issues such as with the recent increases in the number of appeals and the number of Panel Overturns, further analysis and reports to Plans Panels will be prepared with corrective action proposed to be undertaken. The report also shows that there have been no Ombudsman reports finding maladministration by Members in the conduct of planning issues.

## **1.0 Purpose of This Report**

- 1.1 This report provides information to Standards Committee in relation to the monitoring requirements of the Code of Practice for determining Planning Matters.
- 1.2 The report also seeks approval to proposed amendments to the Code of Practice.

## **2.0 Background Information**

- 2.1 The Code of Practice for the Determination of Planning Matters ('the planning code') substantially follows the Model Code produced by the association of Council Solicitors and Secretaries following consultation with the Audit Commission, the Local Government Ombudsman and the Standards Board for England. It was updated in 2007 to reflect changes recommended following a comprehensive review of the Plans Panel Process carried out as part of the Strategic Review of Planning and Development Services.
- 2.2 The aim of this Code of Practice is to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

## **3.0 Main Issues**

### **3.1 Complaints about Breaches of the Code**

- 3.2 There have been no formal complaints in relation to the behaviour of Members or officers under the Code of Practice.

### **3.3 Permitted departures from the Unitary Development Plan**

- 3.4 'Departure applications' are defined as applications for planning permission which do not accord with one or more provisions of the development plan in force in the area which it is situated.
- 3.5 For the year April 07 to April 08 there were 79 applications which were departures from the Development Plan. 48 of the applications were approved and the remaining 21 were refused or withdrawn. This number should be viewed against a total of 6636 decisions in for that period. There are varied reasons for departures from the development plan being approved. Each application is determined on its merits taking into account guidance provided by the development plan, all other material considerations and Government guidance. Because of this it is difficult to accurately explain what could be the main reason for the departures in this report. An example however, would be where 'special circumstances' exist that warrant the waiving of Green Belt Policy. In addition it should be noted that this represents only approximately 0.7% of all decisions in that period. Most but not all of these decisions would be referred to Government Office. The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 provides a legal framework for all local planning authorities in deciding departure applications. This states that "significant" planning applications for development which are not in accordance with the development plan be notified to the Secretary of State unless conditions would make the proposal accord with the development plan. Departures in the greenbelt are covered by the Town and Country Planning (Green Belt) Direction which came into effect in January 2006. This clarifies the arrangements and criteria for referring applications for "inappropriate development" in the Green Belt, as defined in PPG 2 (Green Belts), to the Secretary of State.

Only those applications where the impact was considered to be insignificant were not referred.

### 3.6 Appeals upheld

In the first half of 2007/2008 the percentage of appeals allowed following the refusal of planning permission worsened from the previous year to 51% but improved significantly in the second half of the year to achieve a figure for the year of 43%. This compares with a 37.4 % achieved in the whole of the previous year.

3.7 This fall in performance can be attributed to a various factors including a number of Member overturns which were challenged successfully at appeal.

3.8 However, there has been a significant improvement in performance towards the end of 2007/2008. This has carried into the first months of 2008/9. Despite an increase in the number of appeal decisions (65 in the first quarter of 2008/2009 compared to a total of 184 in the whole year of 2007/2008), the Council has been successful in winning 70% of its appeals.

3.9 A number of factors have contributed to the recent improvement of appeals performance such as more robust decision making and improvements to the quality of appeal statements. And a substantial reduction in the number of Member overturns has also contributed. A Member overturn for the purposes of this analysis is where Members have resolved not to accept the officer's recommendation on an application and this has resulted in a different outcome in the determination of the application.

3.10 In 2006/2007 across the 3 Panels there were a total of 74 recommendations overturned (West 21, East 48, Central 5). In 2007/2008 there were a total of 33 overturns across the 3 panels (West 10, East 16, Central 7). This is a reduction of 45%. Statistics for the 3 Panels since April 2008 show that the number of Panel Overturns in West (4) and Central (1) Panel remain low. However, the number of Member overturns at East Panel appears to be increasing again with 21 between April 2008 and the end of August 2008. Further analysis of the reasons behind this is being undertaken.

3.11 A low proportion of Member overturns is desirable otherwise it gives rise to the perception that officers and Members are not working well together, can result in a lack of confidence in the planning system by developers and the community, and give rise to inefficiencies, poor appeal performance and a higher risk of costs being awarded against the council.

### 3.12 Operation of the Plans Panels

3.13 The Review of Plans Panels currently under way has looked at the structures, processes and operation of the Plans Panels. This had lead to a number of actions which should assist in improving the decision making process. These include Members being required to be trained before they can sit on the Plans Panels, the introduction of protocols for Panel site visits (which provides an opportunity to inspect the site and surroundings and should be seen as a fact finding exercise); Public Speaking at Panel (which sets out the procedures to be adopted to give effect to Plans Panel's decision to allow public speaking as amended to reflect experience gained during its operation over the last 5 years); Pre Application Presentations at Panel and Pre Application Discussions with Local Communities and Ward Members (which explains and sets out how pre application discussions will involve local

communities and how pre application presentations of schemes to Panel will be conducted so they are not used or perceived to be used to determine a proposal prior to the meeting of the Plans Panel). In addition a number of other measures have been introduced to improve how Panels operate. These include a reduction in the size of agendas, reduction in the size of the Panels, trialling the timing of items at Panel and pre application presentations and position statements at Panel.

#### 3.14 External inspection reports in respect of relevant issues

There have been no external reports in respect of any relevant issues raised by the Code of Practice.

#### 3.15 Ombudsman reports finding maladministration by Members in the conduct of planning issues.

3.16 There have been no Ombudsman reports finding maladministration by Members in the conduct of planning issues.

#### 3.17 Proposed Amendments to the Code of Practice

3.18 One amendment is proposed to the Code of Practice for the Determination of Planning Matters. It is proposed that the need to report back on permitted departures is not pursued on future annual reports. Members should be aware that Departures from the Development Plan are no longer reported to Government as a Performance Indicator.

3.19 It is therefore, proposed therefore to delete part (b) of paragraph 18.2 of the code which refers to the monitoring and recording of permitted departures (see paragraph 18.2 of Appendix 1).

3.20 Although not a change to the Code of Practice Members should be aware of the proposal to amend the Members Site Visit Protocol for Plans Panels. This is intended to highlight and make more visible the advice provided in section 13 of the Code which is concerned with site visits. The proposed Members Site Visit Protocol has been developed through a Joint Officer Member working group and has been agreed by the Joint Plans Panel.

3.21 In addition Members should be aware that Protocols are also currently being finalised in relation to Panel site visits, Public Speaking at Panel, Pre Application Presentations at Panel and Pre Application Discussions with Local Communities and Ward Members.

### **4.0 Implications for Council Policy and Governance**

4.1 It is in the interests of good governance that performance against the Council's Codes of Practice is monitored and that the Codes of Practice are kept up to date with the changing and developing role of members and officers within the Council and their changing roles within the planning reform agenda.

### **5.0 Legal and Resource Implications**

5.1 These proposals are consistent with the latest DCLG guidance and advice to promote best practice contained within the 2007 White Paper entitled 'Planning for a Sustainable Future', the Planning and Compulsory Purchase Act 2004 and Councillors Involvement in Planning Decisions (Final Report) 2007, thus reducing

the scope for successful legal challenges to be brought against decisions of the Plans Panel.

5.2 There are no resource implications to this report.

## **6.0 Conclusions**

6.1 The annual report shows that the existing Code of Practice for the Determination of Planning Matters is working well.

6.2 Where there are issues such as with the recent increases in the number of appeals and the number of Panel Overturns, further analysis and reports to Plans Panels will be prepared with corrective action proposed to be undertaken.

6.3 The proposed amendment to the code of practice will assist by ensuring that the document remains up to date as a practical aid for Members when making planning decisions.

## **7.0 Recommendations**

7.1 Members are asked to:

- a) Note the contents of this report; and
- b) Approve the revised code of practice as set out at Appendix 1 as part of the council's constitution.

## **8.0 Background Papers**

- The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999
- PPG 2 (Green Belts)
- Town and Country Planning (Green Belt) Direction which came into effect in January 2006
- White Paper 'Planning for a Sustainable Future' 2007
- Planning and Compulsory Purchase Act 2004
- Councillors Involvement in Planning Decisions (Final Report) 2007