

**Committee: STANDARDS SUB COMMITTEE 1 –
PROBITY IN PLANNING, SITE VISITS AND
PROBITY IN LICENSING**

Agenda Item

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Date: 18 September 2012

**Title: REVISION OF COUNCIL'S CODES OF
PRACTICE**

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Item for decision

Summary

This sub committee was appointed by the Standards Committee at its meeting on 23 July 2012 for the purpose of reviewing Codes of Practice of the council following the Localism Act 2011 and the adoption of the council's new Code of Conduct.

Recommendations

Members determine what amendments to the Codes of Practice relating to planning and licensing they wish to recommend for adoption by the council.

Financial Implications

None.

Background Papers

The following papers were referred to by the author in the preparation of this report (copies of which are available from the author of this report):

Council's Code of Good Practice: Probity in Planning
Planning Committee Procedure for members' site visits
Procedure for parish/town council representatives/members of the public attending meetings of the Planning Committee.
Code of Good Practice – Probity in Licensing
Draft Planning Code of Good Practice for members and officers being considered by the Public Law Partnership.

Impact

Communication/Consultation	None
Community Safety	None
Equalities	None

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Health and Safety	None
Human Rights/Legal Implications	Sound protocols on probity reduce the risk of subjecting the council to legal challenges
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

The council has long had a Code of Good Practice for Probity in Planning. The original Code was based upon guidance given by the Audit Commission prior to there being mandatory Codes of Conduct under the Local Government Act 2000. The Code was revised shortly after the Local Government Act 2000 came into effect based upon guidance issued by ACSes and the Standards Board. That revision is the current Code for the council.

In 2005 the Licensing Act 2003 came into effect. This transferred responsibility for licensing from magistrates' courts to local authorities. The Standards Committee at the time recommended that there should be a protocol for Probity in Licensing as the functions under the 2003 Act were clearly quasi judicial. The Standards Committee proposed a Code of Good Practice which was adopted and stands today.

As members will be aware the Localism Act 2011 made significant changes to the Standards regime. As a result of this some of the current Codes of Good Practice no longer reflect the legislation or the Code of Conduct of the Council.

At Appendix A I attach suggested revisions to the Code of Good Practice Probity in Planning. This includes procedure for site visits and participation at meetings of the Planning Committee. At Appendix B I append suggested amendments to the Code of Good Practice Probity in Licensing.

The vast majority of amendments are necessary to reflect the provisions of the Localism Act 2011 and the new Code of Conduct. I have had particular regard to the provisions of section 25 of the Localism Act 2011. Section 25 provides that in determining the validity of a decision of the council a decision maker is not to be taken to have had or appear to have had a closed mind in making the decision just because he or she had previously done anything which indicated what view the decision maker took or would or might take in relation to a matter.

Prior to enactment of section 25 where a member involved in the decision making process appeared to have a closed mind (i.e. had pre-determined the matter) then the decision was susceptible to challenge by way of judicial review.

Predetermination is effectively a form of bias. As such it offends the law of natural justice and where decisions are tainted with bias they could not be allowed to

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stand. This has the effect of inhibiting members championing particular causes and acting as spokespersons for their constituents.

Section 25 was intended to overcome that difficulty. How far it succeeds in achieving that objective remains to be seen.

The first point to make regarding section 25 is that it only applies in circumstances where the validity of a decision is being called into question. Thus whilst a decision may survive judicial scrutiny because of section 25 the section does not prevent the investigation of allegations of maladministration (by the Ombudsman) or breaches of the Code of Conduct.

A further difficulty is to be found in the wording of the section itself. There is no definition or guidance as to what "just because" means. Some years ago all members of this council signed a pledge to campaign against further runways at Stansted Airport. In the circumstances, it could hardly be said that they could be seen to be addressing an application for a second runway with an open mind. The question would have been therefore whether they did have a closed mind "just because" they had signed the pledge.

It is almost certain that there will continue to be challenges against the validity of local authority decisions on the grounds of predetermination. Any such challenge would be a drain upon the resources of the authority and given the importance of the issue may well find its way to the Supreme Court. I would not therefore wish Uttlesford to be a test case!

In the circumstances, officers suggest that the existing guidance regarding predetermination should remain unchanged.

I have had regard to the Code of Good Practice being considered by the PLP. This is different in style but, save for the fact it repeats large tracts of the Code of Conduct, is not significantly different in substance. As members are used to the current code I do not consider substantial difference in style is warranted.

Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
The Codes of Probity are not consistent with the Localism Act 2011 and/or the council's Code of Conduct.	1, members are likely to make the appropriate amendments.	3, if the Codes of Probity were not consistent with the legislation and Code of Conduct there would be confusion which could lead to	Members scrutinise the suggested revisions to the Code and suggest such other revisions as they consider appropriate to ensure that the Codes of Probity are consistent with the legislation and Code

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		<p>members unwittingly breaching the Code and the council would suffer reputational damage if the public were not clear as to what standards were expected from members.</p>	<p>of Conduct.</p>
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.