

To: All Members of the STANDARDS AND
GENERAL PURPOSES COMMITTEE
(Other Members for Information)

When calling please ask for:
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Calls may be recorded for training or monitoring
Date: 23 June 2023

Membership of the Standards and General Purposes Committee

Cllr Andy MacLeod (Chair)
Cllr John Robini (Vice Chair)
Cllr Janet Crowe
Cllr Michael Goodridge

Cllr Gemma Long
Cllr Peter Nicholson
Cllr John Ward

Town/Parish Representatives

To be confirmed

Dear Member

A meeting of the STANDARDS AND GENERAL PURPOSES COMMITTEE will be held as follows:

DATE: MONDAY, 3 JULY 2023

TIME: 6.00 PM

PLACE: COUNCIL CHAMBER, COUNCIL OFFICES, THE BURYS,
GODALMING

The Agenda for the meeting is set out below.

Yours sincerely

Susan Sale,
Executive Head of Legal & Democratic Services & Monitoring Officer

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NOTE FOR MEMBERS

Members are reminded that contact officers are shown at the end of each report and members are welcome to raise questions etc in advance of the meeting with the appropriate officer.

AGENDA

1. **APOLOGIES FOR ABSENCE**

To receive any apologies for absence.

2. **MINUTES**

To confirm the Minutes of the meetings which took place on 30 November 2022 and 7 June 2023.

3. **DISCLOSURES OF INTERESTS**

To receive from Members, declarations of interests in relation to any items included on the agenda for this meeting in accordance with the Waverley Code of Local Government Conduct.

4. **QUESTIONS BY MEMBERS OF THE PUBLIC**

The Chairman to respond to any written questions received from Members of the public in accordance with Procedure Rule 10.

The deadline for receipt of questions is 5pm on Monday 26 June 2023.

5. **QUESTIONS FROM MEMBERS OF THE COUNCIL**

The Chairman to respond to any written questions received from Members in accordance with Procedure Rule 11.

The deadline for receipt of questions is 5pm on Monday 26 June 2023.

CONSTITUTIONAL MATTERS

6. **PROPOSED REVISIONS TO THE SCHEME OF DELEGATION TO OFFICERS AND COUNCILLORS' PLANNING CODE OF GOOD CONDUCT**

(Pages 5 - 62)

The Standards and General Purposes Committee has been asked to consider proposed amendments to the Council's current constitution in relation to Scheme of Delegation to the Joint Executive Head of Development Management, Revised Planning Committee Procedure Rules, and Revised Councillors' Planning Code of Good Practice and to agree to a consultation on matters to be included in a Memorandum of Understanding between planning officers and Councillors.

Recommendation

The Standards & General Purposes Committee is asked to recommend that the Council approves:

1. The proposed revised Scheme of Delegation to the Joint Executive Head of Planning Development, attached at Appendix 1A.
2. The proposed revised Planning Committee Procedure Rules, attached at Appendix 2.
3. The proposed revised Councillors' Planning Code of Good Practice, attached at Appendix 3A.
4. That a consultation with Councillors is undertaken to inform the content of a Memorandum of Understanding between planning officers and Councillors.

7. REVIEW OF THE WAVERLEY BOROUGH CONSTITUTION (Pages 63 - 70)

There is a statutory obligation upon every Local Authority to have a constitution and to both maintain and publish it. It is considered good practice to keep the constitution under constant review and for councillors to consider a more formal review on an annual basis.

This report asks the Standards & General Purposes Committee to establish, jointly in conjunction with Guildford Borough Council's Corporate Governance & Standards Committee, a new Joint Constitutions Review Group (JCRG), with an overall objective of aligning key parts of the Councils' respective constitutions, where appropriate to do so.

Recommendations to Committee

1. **That the Committee agrees to establish, jointly in conjunction with Guildford Borough Council's Corporate Governance and Standards Committee, a new Joint Constitutions Review Group (JCRG).**
2. That the draft terms of reference of the Constitutions Review Group, as set out in **Appendix 1** to this report, be approved. That the Committee note that the purpose of the Constitutions Review Group will be to review the Waverley Borough Council Constitution, alongside the Guildford Borough Council Constitution, and to report back with their recommendations to both the Corporate Governance and Standards Committee at Guildford and the Standards and General Purposes Committee at Waverley. This Committee will then have the opportunity to consider any recommendations from the Constitutions Review Group

relating to the Waverley Borough Council constitution and may make appropriate recommendations to the Council.

3. That the Committee appoints four councillors to the Constitutions Review Group and notes that Guildford Borough Council will also be invited to appoint four Councillors to the Group from their Corporate Governance and Standards Committee. That the Committee, from among those councillors they appoint, appoints a co-chairman of the Constitutions Review Group.

8. **EXCLUSION OF PRESS AND PUBLIC**

To consider the following recommendation on the motion of the Chairman:

Recommendation

That, pursuant to Procedure Rule 20 and in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting during consideration of the following item on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during the item, there would be disclosure to them of exempt information (as defined by Section 100I of the Act) of the description specified at the meeting in the revised Part 1 of Schedule 12A to the Local Government Act 1972.

**For further information or assistance, please telephone
Leila Manzoor, Democratic Services Officer, on 01483 523224 or by
email at leila.manzoor@waverley.gov.uk**

Waverley Borough Council

Report to: Standards & General Purposes Committee

Date: 3 July 2023

Ward(s) affected: N/A

Report of Director: Transformation & Governance/Place

Author: Claire Upton-Brown, Joint Executive Head of Planning Development

Fiona Cameron, Interim Democratic Services Manager

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Email: claire.upton-brown@waverley.gov.uk,
fiona.cameron@waverley.gov.uk

Executive Lead Councillor responsible: Councillor Liz Townsend

Email: liz.townsend@waverley.gov.uk

Report Status: Open

Proposed revisions to the Scheme of Delegation to Officers, and Councillors' Planning Code of Good Conduct

1. Executive Summary

- 1.1 The Standards and General Purposes Committee has been asked to consider proposed amendments to the Council's current constitution

in relation to Scheme of Delegation to the Joint Executive Head of Development Management

Revised Planning Committee Procedure Rules, Revised Councillors' Planning Code of Good Practice and agree to a consultation on matters to be included in a Memorandum of Understanding between planning officers and Councillors.

2. Recommendation to Committee

The Standards & General Purposes Committee is asked to recommend that the Council approves:

- 2.1. The proposed revised Scheme of Delegation to the Joint Executive Head of Planning Development, attached at Appendix 1A.
- 2.2. The proposed revised Planning Committee Procedure Rules, attached at Appendix 2.
- 2.3. The proposed revised Councillors' Planning Code of Good Practice, attached at Appendix 3A.
- 2.4. That a consultation with Councillors is undertaken to inform the content of a Memorandum of Understanding between planning officers and Councillors.

3. Reason(s) for Recommendation:

- 3.1 The proposed revised Scheme of Delegation to the Joint Executive Head of Planning Development clarifies the delegated authority to the Joint Executive Head of Planning Development, and the exceptions to that delegated authority. It includes two new exceptions relating to householder applications and major or minor applications that generate a high level of representations. The revised Scheme of Delegation aims to ensure that the Planning Committee's time is spent on considering applications of strategic importance to the local authority.
- 3.2 The proposed revised Planning Committee Procedure Rules clarify the speaking arrangements at the Planning Committee for councillors

who have declared an interest in a planning application, or who are ward councillors speaking in relation to a planning application. The revisions also clarify the arrangements for members of the Planning Committee to propose and debate a motion that may or may not be in line with the planning officers' recommendation. This follows advice from the Planning Advisory Service, as set out in the 2018 Peer Review Report.

- 3.3 The proposed revised Councillors' Planning Code of Good Practice updates the existing Councillors' Planning Code of Good Practice which was last revised in October 2016. The revisions reflect updated Planning Advisory Service guidance (2019), Waverley's adoption of the Model Councillor Code of Conduct, and Waverley's recently revised Planning Committee arrangements.

4. Exemption from publication

None.

5. Purpose of Report

- 5.1 The report presents revisions to documents within the Council's Constitution that describe the governance arrangements for determining planning applications with the aim of improving the efficiency of decision-making by officers and the Planning Committee.

6. Strategic Priorities

- 6.1 The proposals support the following strategic priorities:
- Local, open, participative government
 - Effective strategic planning and development management to meet the needs of our communities

7. Background

7.1. The Local Government Association Planning Advisory Service provided Waverley with a report on the Review of performance in response to non-major applications in June 2022. The report included a series of recommendations. A link to the report is provided at 17.3 below however, the specific recommendations are set out below:

R1 Ensure all staff prioritise the provision of progress updates using extensions of time as the primary method (wherever necessary) Extensions of time should be requested in all cases where the application will not be able to be determined within the statutory target without exception

R2 Identify dedicated time when officers will be unavailable to take phone calls and e-mails each week and use voicemail and customer services as a means of controlling interruptions and boosting productivity

R3 Prepare a simple customer protocol to explain this revised more customer focused approach to service delivery supported by customer service training

R4 Address backlog of applications through use of temporary staff or outsourcing

R5 Review scheme of delegation to reduce the number of Planning Committee meetings held

R6 Review the trigger mechanism for Member Site Visits

R7 Review validation checklist to restrict information to that which is essential only. The Checklist then needs to be applied rigorously

R8 Taking a more proportionate approach to consultation

R9 Review format of reports and process for the issue of decisions

- R10 Review impact of team restructure in order to mitigate any negative impacts that may have arisen
- 7.2 The Council was invited at its annual meeting on 23 May 2023 to establish Committees for the municipal year 2023/24 and determine the size of committee and restrictions on membership, which it did.
 - 7.3 However, the Standards and General Purposes Committee was asked to review the establishment of the Committees, their size and terms of reference and to make any recommendation for change, as appropriate, to Council.
 - 7.4 The Standards and General Purposes Committee has within its purpose “to monitor and review the Council’s constitution”.
 - 7.5 In light of this and recommendation 5 of the PAS report the Standards & General Purposes Committee was asked to consider a report on Proposed changes to the size, composition and terms of reference of Waverley Borough Council's committees at its meeting on 7 June 2023.
 - 7.6 The Committee recommended to Full Council at its meeting on 7 June 2023 that the Western and Eastern Committee should be replaced by a single Planning Committee for a 1 year trial period. Full Council requested officers to review the scheme of delegation in accordance with recommendation 5 of the PAS report to reduce the number of non-major applications being considered by Planning Committee.
 - 7.7 Officers have reviewed the scheme of delegation to the Joint Executive Head of Development Management with the proposed revised scheme attached as Appendix 1A to this report. For comparison Appendix 1C contains the Existing Scheme of Delegation to the Joint Executive Head of Development Management
 - 7.8 Appendix 2 contains the Revised Planning Committee Procedure Rules showing tracked changes which clarify speaking arrangements for councillors with interests, speaking arrangements for ward councillors who are members of the Planning Committee, and revised

arrangements for the committee considering a motion contrary to the officers' recommendation.

- 7.9 The Councillors' Planning Code of Good Practice has also been updated to reflect revised arrangements as well as updated PAS guidance. The revised Codes is contained at Appendix 3A with the existing Councillors' Planning Code of Good Practice, which was last revised in 2016, at Appendix 3B for comparison.
- 7.10 To support closer working between officers and Councillors the Executive Head of Planning Development is promoting that a Memorandum of Understanding (MOU) is developed between officers and Councillors. Some initial suggestions are contained at Appendix 4. All Councillors will be invited to suggest content for this MOU, a final draft will be reported to the next Standards and General Purposes Committee for approval.

8. Consultations

- 8.1. No formal consultation has taken place on the suggested amendments.

9. Key Risks

- 9.1. The function of a resilient planning committee is a key part of the Council's role as Local Planning Authority, by ensuring that Members understand their function and role in decision making. Poor decision making has considerable risk in terms of financial and reputational damage. Furthermore, if correct legal processes are not followed, the Council could be open to legal challenge.

10. Financial Implications

- 10.1 Changes to the member referral process, as recommended in this report, have the ability to improve financial performance by making the application process more efficient. However, failure to make

these changes may have very significant adverse financial implications such as cost of appeals and the council being designated for non-performance.

- 10.2 Failure to ensure the timeliness and quality of planning decision making, may lead to unnecessary and avoidable appeals or legal challenges, thus incurring potentially significant costs to the Council.

11. Legal Implications

- 11.1 However, potentially, there are also very significant legal implications arising from some of the recommendations. Although most represent procedural matters, as mentioned above, failure to ensure the timeliness and robust quality of planning decision making, may lead to unnecessary and avoidable appeals or legal challenges. In addition, these can in turn lead to added risk, reputational damage and Secretary of State intervention.

12. Human Resource Implications

- 12.1 There are no direct human resources implications in relation to the proposals in the report.

13. Equality and Diversity Implications

- 13.1 There are no direct equality and diversity implications in relation to the proposals in the report.

14. Climate Change/Sustainability Implications

- 14.1. There are no direct climate change or sustainability implications in relation to the proposals in the report.

15. Summary of Options

- 15.1 The Committee can either accepted the changes proposed to the Scheme of Delegation or refuse the changes. A third option would be to instruct officers to amend the proposed changes.

16. Conclusion

- 16.1 The changes that have been suggested as set out in the Appendices provide clarity and will support actions to improve performance, transparency in decision making and positive relationships between officers and councillors.

17. Background Papers

- 17.1 [Probity in planning: Advice for councillors and officers making planning decisions \(Planning Advisory Service, 2019\)](#)
- 17.2 [Planning Improvement Peer Challenge Report \(2018\)](#)
- 17.3 [PAS Review of performance in response to non-major applications \(June 2022\)](#)

18. Appendices

- 18.1 Appendix 1A - Revised Scheme of Delegation to the Joint Executive Head of Development Management

Appendix 1B – List of proposed changes to the Scheme of Delegation

Appendix 1C - Existing Scheme of Delegation to the Joint Executive Head of Development Management with tracked changes

Appendix 2 – Revised Planning Committee Procedure Rules (with tracked changes)

Appendix 3A – Revised (July 2023) Councillors’ Planning Code of Good Practice

Appendix 3B – Existing (2016) Councillors’ Planning Code of Good Practice

Appendix 4 – suggested content for Memorandum of Understanding

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Waverley Scheme of Delegation to the Joint Executive Head of Planning Development – Proposed (clean version)

O. JOINT EXECUTIVE HEAD OF PLANNING DEVELOPMENT

Development Control

	Authority	Function
O1	<p>To make all decisions, take all actions and exercise all powers in respect of the Council's Development Management, Planning Policy and Planning Enforcement functions in accordance with any one or number of the following legislation (and any regulations and/or statutory instruments made thereunder) and/or any adopted policy(ies) of the Council and/or any other subsequent new or replacing legislation relating to the Council's Development Management, Planning Policy and Planning Enforcement functions:</p> <ul style="list-style-type: none"> i. Caravan Sites and Control of Development Act 1960 ii. Countryside and Rights of Way Act 2000 iii. Enterprise and Regulatory Reform Act 2013 iv. Environment Act 2021 v. Environmental Protection Act 1990 vi. Growth and Infrastructure Act 2013 vii. Housing Act 2004 viii. Human Rights Act 1998 ix. Infrastructure Act 2015 x. Local Democracy, Economic Development and Construction Act 2009 xi. Local Government Act 2003 xii. Localism Act 2011 xiii. Planning (Hazardous Substances) Act 1990 xiv. Planning (Listed Buildings and Conservation Areas) Act 1990 xv. Planning Act 2008 xvi. Planning and Compensation Act 1991 xvii. Planning and Compulsory Purchase Act 2004 xviii. Pollution Prevention and Control Act 1999 xix. Town and Country Planning Act 1990 xx. Self-build and Custom Housebuilding Act 2015. Neighbourhood Planning Act 2017 xxi. Anti-Social Behaviour Act 2003 xxii. The Conservation and Habitat and Species Regulations 2010 <p>Including:</p> <p>(A) To determine planning applications, applications for advertisement consent, non-material amendments, and minor material amendments applications, details to comply with conditions, variation/removal of</p>	<p>Non-executive or executive as appropriate to the function being exercised</p>

	<p>condition applications, prior notifications/prior approval notices, permissions in principle, and certificates of lawfulness.</p> <p>(B) To determine applications for Listed Building and Conservation Area consent and to take action in relation to Listed Buildings and Conservation Areas.</p> <p>(C) To respond to consultations and notifications from other local authorities, public bodies, etc.</p> <p>(D) To determine the need for an Environmental Impact Assessment and/or a Strategic Environmental Assessment.</p> <p>(E) To make Screening and Scoping Opinions.</p> <p>(F) To undertake Screening Opinions and Appropriate Assessments pursuant to Part IV of the Conservation (Natural Habitats and Conservation) Regulations 1994.</p> <p>(G) To take direct action/seek injunctions in relation to breaches of planning control, remove unauthorised signage/advertisements and remedying the condition of land.</p> <p>(H) To serve, amend, vary, withdraw, or revoke any notices, permissions, or certificates (as appropriate) (including but not limited to enforcement notices, breaches of condition notices, temporary stop notices, stop notices, amenity notices, planning contravention notices, breach of condition notices community infrastructure stop notices, certificates of lawfulness).</p> <p>(I) To fulfil functions in connection with the proper maintenance of land (Section 215 Notices).</p> <p>(J) To decide not to take enforcement action when it is not considered expedient to do so.</p> <p>(K) To deal with all matters relating to High Hedges.</p> <p>(L) On receipt of a Hedgerow Replacement Notice to determine whether the hedge is important in accordance with the Hedgerow Regulation 1997.</p> <p>(M) In the case of important hedges to issue Hedgerow Replacement Notice in accordance with the Hedgerow Regulation 1997.</p> <p>(N) To authorise the waiving of replanting requirements in accordance with Section 206 of the Town and Country Planning Act 1990.</p>	
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<p>(O) To authorise the service of tree replacement notices under Section 207 and 213 of the Town and Country Planning Act 1990 (as amended).</p> <p>(P) To make provisional Tree Preservation Orders.</p> <p>(Q) In consultation with the Chair of the Planning Committee and the relevant local ward councillor(s), to confirm unopposed Tree Preservation Orders.</p> <p>(R) In consultation with the Chair of the Planning Committee and the relevant local ward councillor(s) to decide not to confirm a Tree Preservation Order.</p> <p>(S) To respond to the Licencing Authority in connection with consultations on applications under the Licencing Act 2003 and Gambling Act 2005 on behalf of the Local Planning Authority.</p> <p>(T) To apply to the Licencing Authority for a review of a premises licence or club premises certificate or licence under Section 197 of the Gambling Act 2005.</p> <p>(U) To maintain the Local Land Charges Register and issue certificates of search.</p> <p>(V) The making and/or adoption of any plan for the purposes of neighbourhood planning.</p> <p>(W) In consultation with the Portfolio Holder and S151 Officer, to review annually the pre-application charging regime, including the level of fees.</p> <p>(X) In consultation with the appropriate Portfolio Holder, to review and adjust the level of fees charged for the Assisted Land Charges Service for private search companies.</p> <p>(Y) To decline to determine repetitive applications.</p> <p>(Z) To make and confirm Article 4 Directions where there are no objections.</p> <p>EXCEPT FOR</p> <p>1. Planning applications defined as 'major' by the Government (i.e. 10 or more units of residential accommodation, more than 1,000 sqm commercial floorspace and site area of more than 1 hectare) and which in the judgement of the Joint Executive Head of Planning Development have major strategic implications for the authority.</p>	
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	<ol style="list-style-type: none"> 2. Planning applications where a Waverley Borough Councillor asks that the application be determined by the Planning Committee and puts forward relevant planning grounds to the Joint Executive Head of Planning Development. 3. A householder application with 10 or more letters of representation with a view contrary to the officer recommendation. 4. A major or minor application (non-householder) with 20 or more letters of representation with a view contrary to the officer recommendation. 5. Any planning application where the Council is the applicant. 6. Any planning application where the applicant is a Waverley Borough Councillor or employee, including Joint Officer, or their relative. 7. Any planning application which is required to be referred to the Secretary of State. 	
	Authority	After consultation with
O2	To agree variations to Section 106 legal agreements under the Town and Country Planning Act 1990 which relate to planning applications determined by the Planning Committees, except where the variation proposed relates to the proposed tenure mix and amount of the affordable housing provision.	The Chair of Planning Committee and Ward Councillors (with the exception of deeds of variation that secure all original clauses, secured for applications under s73 or s73A)
O3	To agree the terms of, and variations to, Section 106 Legal Agreements under the Town and Country Planning Act 1990 in connection with the grant of planning permission: <ul style="list-style-type: none"> • under delegated powers; or • Section 106 agreements that are the subject of an appeal; or • following a refusal on appeal. 	N/A

Proposed Changes to the Scheme of Delegation to the Joint Head of Planning Development

- O1 Delete current O1 – this will be covered within the proposed O1 (A) other than where exceptions to the delegated authority apply (#1, #2, #4).
- O2 No change
- O3 No change
- O4 Becomes O1, as the main delegated authority to make decisions under various legal provisions, which have been updated and re-numbered.
- O5 removed as a separate reference as the specific authorities are included with O4, and these have been added to for completeness.

(H) is removed from delegated powers in the interest of transparency and is listed as exception 6.

Exceptions to the delegated authority have been simplified and made clearer:

- a.1 Deleted - reference to threshold of 25 dwellings is a holdover from the Joint Planning Committee and has no objection relevance.
- a.2/1 Wording is simplified to make it clearer.
- a.3 deleted – this is a legacy from when there was a Joint Planning Committee.
- b/2 Councillor call-in has been simplified with the 21 day/three week deadline removed.
- C deleted
- 3. New! Notwithstanding councillor call-in provisions, a householder application with 10 or more letters of representation with a view contrary to the officer recommendation will come to the Planning Committee.
- 4. New! Notwithstanding councillor call-in provisions, a major or minor application with 20 or more letters of representation with a view contrary to the officer recommendation will come to the Planning Committee.
- d/5 No change
- 6. removed from delegations in the interest of transparency.
- e/7 No change
- f Deleted. No longer required as the 21 day deadline for call-in has been removed.

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Waverley Scheme of Delegation of Functions to Officers

Extract showing current delegations to the Joint Executive Head of Planning Development with tracked changes

O. JOINT EXECUTIVE HEAD OF PLANNING DEVELOPMENT

Development Control

	Authority	After Consultation with	Function
O.1	To determine major planning applications where these are resubmitted applications previously refused only for SPA reasons which are now resolved and where: (a) the application is not materially different from the original application; (b) the material considerations affecting the decision have not changed; (c) there is no request from a councillor to call in the application for determination by the Committee as set out in 3(b) below.	The Chair of the relevant Planning Committee and Ward Councillors	Non-executive
O.2	To agree variations to Section 106 legal agreements under the Town and Country Planning Act 1990 which relate to planning applications determined by the Planning Committees, except where the variation proposed relates to the proposed tenure mix and amount of the affordable housing provision.	The Chair of the relevant Planning Committee and Ward Councillors (with the exception of deeds of variation that secure all original clauses, secured for applications under s73 or s73A)	Non-executive

	Authority	Function
O.3	To agree the terms of, and variations to, Section 106 Legal Agreements under the Town and Country Planning Act 1990 in connection with the grant of planning permission under delegated powers and Section 106 agreements following a refusal on appeal.	Non-executive
O1.	To make all decisions, take all actions and exercise all powers in respect of the Council's Development Management, Planning Policy and Planning Enforcement functions in accordance with any one or number of the following legislation (and any	Non-executive, or Executive as appropriate to

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	<p>regulations and/or statutory instruments made thereunder) and/or any adopted policy(ies) of the Council and/or any other subsequent new or replacing legislation relating to the Council's Development Management, Planning Policy and Planning Enforcement functions:</p> <ul style="list-style-type: none"> i. Caravan Sites and Control of Development Act 1960 ii. Countryside and Rights of Way Act 2000 iii. Enterprise and Regulatory Reform Act 2013 iv. Environment Act 1995 2021 v. Environmental Protection Act 1990 vi. Growth and Infrastructure Act 2013 vii. Housing Act 1996 viii. vi. Housing Act 2004 ix. vii. Human Rights Act 1998 x. viii. Infrastructure Act 2015 xi. ix. Local Democracy, Economic Development and Construction Act 2009 xii. x. Local Government Act 2003 xiii. xi. Localism Act 2011 xiv. xii. Planning (Hazardous Substances) Act 1990 xv. xiii. Planning (Listed Buildings and Conservation Areas) Act 1990 xvi. xiv. Planning Act 2008 xvii. xv. Planning and Compensation Act 1991 xviii. xvi. Planning and Compulsory Purchase Act 2004 xix. xvii. Pollution Prevention and Control Act 1999 xx. xviii. Town and Country Planning Act 1990 xxi. xxi. Building Act 1984 xxii. xix. Self-build and Custom Housebuilding Act 2015 xxiii. xx. Neighbourhood Planning Act 2017 xxiv. xxi. Anti-Social Behaviour Act 2003 xxv. xxii. The Conservation and Habitat and Species Regulations 2010 	<p>the function being exercised</p>
<p>Q.5</p>	<p><u>Including:</u></p> <ul style="list-style-type: none"> (A) To determine planning applications, applications for advertisement consent, non-material and minor material amendments applications, details to comply with conditions, variation/removal of condition applications, prior notifications/prior approval notices, permissions in principle, and certificates of lawfulness. (B) To determine applications for listed building and Conservation Area consent and to take action in relation to listed buildings and Conservation Areas. (C) To respond to consultations and notifications from other local authorities, public bodies, etc. (D) To determine the need for an Environmental Impact Assessment and/or a Strategic Environmental Assessment. 	<p>Non-executive</p>

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<p>E. To make Screening and Scoping Opinions</p> <p>F. To undertake Screening Opinions and Appropriate Assessments pursuant to Part IV of the Conservation (Natural Habitats and Conservation) Regulations 1994</p> <p>(GE) To take direct action/seek injunctions in relation to breaches of planning control, remove unauthorised signage/advertisements and remedying the condition of land.</p> <p>(HF) To serve, amend, vary, withdraw, revoke any notices, permissions, certificates (as appropriate) (including but not limited to enforcement notices, breaches of condition notices, temporary stop notices, stop notices, amenity notices, planning contravention notices, breach of condition notices, community infrastructure stop notices, certificates of lawfulness).</p> <p>I. To undertake default works, authorise entry, require discontinuance.</p> <p>J. To decide not to take enforcement action when it is not considered expedient to do so.</p> <p>K. To deal with all matters relating to High Hedges.</p> <p>L. On receipt of a Hedgerow Replacement Notice to determine whether the hedge is important in accordance with the Hedgerow Regulation 1997.</p> <p>M. In the case of important hedges, to issue a Hedgerow Replacement Notice in accordance with the Hedgerow Regulation 1997.</p> <p>N. To authorise the waiving of replanting requirements in accordance with Section 206 of the Town and Country Planning Act 1990.</p> <p>O. To authorise the replacement of tree replacement notices under Section 207 and 213 of the Town and Country Planning Act 1990.</p> <p>P. To make provisional Tree Preservation Orders.</p> <p>Q. In consultation with the Chair of the Planning Committee and the relevant local ward councillor(s) to confirm unopposed Tree Preservation Orders.</p> <p>R. In consultation with the Chair of the Planning Committee and the relevant local ward councillor(s) to decide not to confirm unopposed Tree Preservation Orders.</p> <p>S. To respond to the Local Licensing Authority in connection with consultations on applications under the Licensing Act 2003 and Gambling Act 2005 on behalf of the local planning authority;</p>	
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<p><u>T.</u> <u>To apply to the Local Licensing Authority for a review of a premises licence or a club premises certificate or licence under Section 197 of the Gambling Act 2005.</u></p> <p><u>U.</u> <u>To maintain the Local Land Charges Register and issue certificates of search.</u></p> <p><u>V(G)</u> <u>The making and/or adoption of any plan for the purposes of neighbourhood planning.</u></p> <p><u>W.</u> <u>In consultation with the Portfolio Holder and S151 Officer, to review annually the pre-application charging regime, including the level of fees.</u></p> <p><u>X.</u> <u>In consultation with the appropriate Portfolio Holder to review and adjust the level of fees charged for the Assisted Land Charges Service for private search companies.</u></p> <p><u>Y.</u> <u>to decline to determine repetitive applications.</u></p> <p><u>Z.</u> <u>to make and confirm Article 4 Directions where there are no objections.</u></p> <p>(H) In consultation with the relevant Planning Committee Chair and Vice-Chair, and relevant Ward Member(s), to determine planning applications with a connection to a Member or Officer, which satisfy all other requirements of a decision under delegation.</p> <p>except for:</p> <p>(a) planning applications that must be referred to the relevant Planning Committee in accordance with Part 3 of the Constitution and as set out below:</p> <p>(a.1) All housing schemes which propose a net increase of more than 25 dwellings, where the recommendation is for permission to be granted.</p> <p>(a.2) 1 Applications defined as major, as defined by the Government (10 or more units of residential accommodation, more than 1,000 sqm commercial floorspace and site area of more than 1 hectare) and which, in the judgement of the Joint Executive Head of Planning Development and the relevant Planning Committee Chair, meet the following criteria <u>have major strategic implications for the authority.</u></p> <p>i. have a significant planning impact beyond the Area in which they are situated, and/or</p> <p>ii. are of strategic importance, and/or</p> <p>iii. involve new planning issues for the Borough; or</p> <p>iv. are a revised application for parcel of land within a development with an extant planning permission previously determined by a</p>	
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APPENDIX 1C

	<p>Planning Committee that increases the total number of dwellings on the total site; and/or</p> <p>v. — where a revision to an extant planning permission brings the total number of dwellings on a site to 25 or more; or</p> <p>(a.3) — where within three weeks of the application appearing on the Waverley weekly list of planning applications, the Chair or Vice-Chair of the relevant Planning Committee and the ward member request that it be referred to the Planning Committee and put forward relevant grounds as set out in (a.2)(i) to (v) above, the Joint Chief Executive and Joint Executive Head of Planning Development will normally submit the application to the Planning Committee.</p> <p>(b)2. <u>Planning applications where a Waverley Borough Councillor asks that the application be determined by the Planning Committee and puts forward relevant planning grounds to the Joint Executive Head of Planning Development.</u></p> <p>— any planning application where, within three weeks of the publication of the weekly list of planning applications, any councillor from the relevant Planning Committee (for the Committee including all or part of the planning application site concerned) makes a request to the Joint Executive Head of Planning Development (or any officer(s) nominated by them), which may or may not be supported in writing by the relevant Town or Parish Council, putting forward matters that are relevant planning grounds, to refer an application to the next appropriate meeting of the relevant Planning Committee for determination.</p> <p>— (For (b) above) Where the three-week call-in period has expired, but the Joint Executive Head of Planning Development is satisfied that there is sufficient justification on planning grounds and the application has not been determined, they may, after consultation with the Chair of the relevant Committee, arrange for that application to be referred to the Committee.</p> <p>(c) any planning application where an objection from a statutory consultee remains unresolved and the officer's recommendation is to approve the application.</p> <p>3. <u>A householder application with 10 or more letters of representation with a view contrary to the officer recommendation.</u></p>	
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APPENDIX 1C

	<p>4. <u>A major or minor application (non-householder) with 20 or more letters of representation with a view contrary to the officer recommendation.</u></p> <p>(e)5. any planning application where the Council is the applicant.</p> <p>6. <u>any application where the applicant is a Waverley Borough Councillor or employee, including a Joint Officer, or their relative.</u></p> <p>(e)7. any planning application which is required to be referred to the Secretary of State.</p> <p>(f) planning applications which, by the time of the expiry of the 21-day consultation period, have received 5 or more letters of objection or 5 or more letters of support (but not a combination of both, and not from the same individual or the same household) shall only be determined under delegated powers after the Joint Executive Head of Planning Development (or any officer nominated by them) has received written confirmation from the relevant Ward members(s) that they do not wish the matter to be determined by the relevant Planning Committee.</p>	
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Licensing

	Authority	Function
O.6	<p>Under the Licensing Act 2003:</p> <p>(a) to respond to the Licensing Authority in connection with consultations on applications on behalf of the local planning authority;</p> <p>(b) to apply for a review of a premises licence or a club premises certificate.</p>	Non-executive

Part 4.2 Planning Committee Procedure Rules

1. Introduction

- 1.1 Unless otherwise specified, the council procedure rules apply to all meetings of the Planning Committee in addition to the specific procedures set out below.

2. Procedure at the meeting

- 2.1 The order of planning applications on the agenda will be arranged to ensure that applications with public speakers are heard first.

- 2.2 The Chair will announce each application in turn.

- 2.3 If a member of the Planning Committee has ~~disclosed~~ a Disclosable Pecuniary Interest ~~or other non-pecuniary but prejudicial interest in relation to which directly relates to~~ a planning application, they must declare ~~disclose~~ their interest; unless they have a dispensation, they must not take part in the debate nor vote on the application; and will be asked to ~~they must~~ leave the meeting room until that application has been determined.

- 2.4 If a member of the Planning Committee has an Other Registrable Interest in relation which directly relates to a planning application, they must declare ~~disclose~~ their interest, and they must not take part in the debate nor vote and must leave the meeting room, unless they have a dispensation. If the planning application is available for public speaking, the committee member may speak for up to four minutes before leaving the meeting room.

- 2.5 If a member of the Planning Committee identifies that a matter has arisen in relation to a planning application that directly relates to their own financial interest or well-being, or that of a relative or close associate, they must disclose it. They may not take part in the debate nor vote and must leave the meeting room, unless they have a dispensation. If the planning application is available for public speaking, the committee member may speak for up to four minutes before leaving the meeting room.

If a member of the Planning Committee identifies that a matter has arisen in relation to a planning application that affects their own financial interest or well-being, or that of a relative or close associate, they must disclose it. If the matter affects them, or their relative or close associate, no more than the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would not affect their view of the wider public interest, they may remain in the meeting room and participate in the debate and vote. If the matter affects them, or their relative or close associate, more than the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect their view of the wider public interest, the member may not take part in the debate nor vote and must leave the meeting room, but if the planning application is available for public speaking, the committee member may speak for up to four minutes before leaving the meeting room.

- 2.36 The planning officer will make a presentation of the application to the Planning Committee, setting out the material planning considerations and policy framework under-pinning the officer recommendation, and reporting any late updates.
- 2.47 Where an application has triggered the public speaking scheme, registered speakers will have the opportunity to address the meeting for a maximum of four minutes: the eObjector will go first, then the sSupporter (usually the applicant or their agent), followed by the town/parish council representative, ~~and finally the Ward Councillor.~~
- 2.58 Each speaker will have up to ~~four~~4 minutes to make a statement unless they have chosen to share their time with another speaker in the same category in which case the clock will run continuously for both speakers.
- 2.69 At the conclusion of public speaking, any councillors who are not members of the Planning Committee but who have given notice to the Democratic Services Officer by noon on the day of the meeting that they wish to make a statement, will be invited to speak for up to 4 ~~four~~ minutes each.
- 2.10 Where a ~~the~~ ward councillor ~~for a planning application who is not a member of the Planning Committee~~ addresses the committee in this way, they shall ~~also~~ have the right speak again towards the end of the eCommittee's debate to clarify any matters raised.
- 2.11 Where a ward councillor for a planning application is a member of the Planning Committee, they are excluded from taking part in the debate and vote on that planning application. They must step away from the Planning Committee to the public speaking area, and may address the Committee for up to four minutes and they shall also have the right speak again towards the end of the Committee's debate to clarify any matters raised.
- 2.712 To begin the Planning Committee's consideration of a planning application, the Chair will ask Planning Committee members if they have any questions for the planning officer(s) and/or legal representative. ~~The committee members will then consider the planning application and ask any questions of the officers.~~
- 2.13 At the conclusion of members' questions, the Chair will ask the Committee for a motion (to approve, refuse, defer) without a requirement to follow the officer's recommendation. The mover of the motion should be allowed to speak to their motion as they present it, but they could also leave that until later if they prefer. A seconder is required for the debate to proceed.
- 2.14 A motion that is contrary to the officers' recommendation must include clear and valid reasons on planning grounds. The officer will provide advice to the committee on the reasons for refusal.
- 2.15 The Chair should move a motion (ideally in line with the officers' recommendation) if no other motion comes forward.
- 2.16 Members should focus their contributions on their agreement (short contributions) or disagreement (longer, but still to the point) with the motion in front of them.
- 2.17 Once all contributions from the Planning Committee have been made, the Chair should invite Ward councillors to make any concluding remarks of clarification.
- 2.18 The Chair will call the vote. If the motion falls, the process starts again.
- ~~2.8 — The planning officer and/or solicitor will be allowed to make any concluding points.~~

~~2.9 — The committee will vote on any proposition or amendment which has been moved and seconded, for example to amend, add or remove conditions, or to defer consideration.~~

~~2.10 — The Chair will move the officer's recommendation as set out in the report as amended by the committee (if applicable), and the committee will vote on that recommendation.~~

~~2.11 — If a motion to approve the officer's recommendation fails, the Chair will invite the committee to propose an alternative recommendation, with planning reasons. The Planning Officer and/or solicitor will be given the opportunity to explain the possible implications of a contrary decision prior to a vote being taken.~~

3. Public speaking at Planning Committee

3.1 The arrangements for public speaking at Planning Committees are set out in the Council's Public Speaking Procedure Rules at Part 4.7 of this Constitution.

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COUNCILLORS’ PLANNING CODE OF GOOD PRACTICE

July 2023

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1. Foreword

- 1.1 This Probity in Planning guide is for councillors and planning officers and reflects the requirements of the Localism Act 2011, the recommendations of the Third Report of the Committee on Standards in Public Life ('Nolan Report'), Local Government Association guidance and the Council's own experience.
- 1.2 The guidance clarifies how all councillors should understand their roles and responsibilities when involved in planning discussions, plan making and determining planning applications.
- 1.3 It is important that councillors and officers familiarise themselves with this guidance and with the other Codes and Protocols which sit alongside it. Councillors must ensure that their conduct accords with the requirements of the Councillors' Code of Conduct and Member/Officer Protocol. Equally, officers must ensure that their conduct accords with the Code of Conduct for Staff and the Member/Officer Protocol.
- 1.4 Councillors should note that this guidance does not constitute legal advice.
- 1.5 Any councillor or officer with any doubts about the matters presented in this guidance should contact the Monitoring Officer for clarification.

2. Introduction

- 2.1 The planning system involves taking decisions about the use and development of land. It is not an exact science and relies on informed judgement within a firm policy context. It is important that all concerned (applicants, objectors, practitioners, officers, councillors, and the general public) have complete confidence in the integrity and transparency of the system.
- 2.2 Councillors are required to adhere to the following general principles prescribed by the Localism Act 2011, as attached to the Councillors' Code of Conduct:
 - **Selflessness.** Holders of public office should act solely in terms of the public interest.
 - **Integrity.** Holders of public office must avoid placing themselves under any obligation to people or organisations that try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves their family or their friends. They must declare and resolve any interests and relationships.
 - **Objectivity.** Holders of public office must act and take decisions impartially, fairly and on merit using the best evidence and without discrimination or bias.
 - **Accountability.** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

- **Openness.** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- **Honesty.** Holders of public office should be truthful.
- **Leadership.** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Officers are also obliged to adhere to the above-mentioned principles.

- 2.3 The Councillors' Code of Conduct makes clear that, in taking public office, councillors must accept constraints on their behaviour. It is not enough to avoid actual impropriety. You should at all times avoid any occasion for suspicion and any appearance of improper conduct.
- 2.4 This local code of practice has been prepared to reflect government guidance within the local context of Guildford. It is intended as a guide to councillors and officers to ensure that decisions are taken impartially, without bias and are well founded.

3. Planning policies and the Local Plan

- 3.1 This local code of practice also applies to decisions on development plans, supplementary planning guidance or other policy documents.
- 3.2 Local plans must be positively prepared, justified, effective and consistent with national policy in accordance with section 20 of the Planning and Compulsory Purchase Act 2004 (as amended). Decisions must be taken in accordance with the provisions of the Development Plan and councillors must vote in accordance with it unless there are mitigating material considerations.

4. Applicability of the Code

- 4.1 This code of practice is intended to be a guide for councillors and officers as to the conduct expected of them on matters relating to planning in the Borough.
- 4.2 Councillors and others to whom this code applies must make their own judgments as to its application to specific planning matters, including individual planning applications. In most cases, its applicability will be clear. If any councillor is in doubt, they should seek advice from the Monitoring Officer. However, the final decision must be for the councillor to determine.

5. Breaches of the Code

- 5.1 A breach of the code is a serious matter and, although usually not amounting to a breach of the criminal law, may incur an adverse report from the Local Government Ombudsman and/or action under the Councillors' Code of Conduct.

6. Training

- 6.1 The Council requires that all councillors receive an introduction to planning training session when they are elected. It is important for all councillors, not only those sitting on the Planning Committee, to receive this training. No member or substitute member of the Planning Committee shall be permitted to sit on the Committee as a decision-maker unless they have completed the introduction to planning training session.
- 6.2 For those members sitting on the Planning Committee further training sessions are delivered regularly. It is important that members and substitute members attend all training sessions so that any risk for the Council is kept low and the local community can be reassured that those determining Planning matters have the knowledge to be able to do so.
- 6.3 Members of the Planning Committee or substitute members who are absent when training is delivered must ensure they view the training recorded on the webcast to familiarise themselves with the training provided.
- 6.4 All councillors will receive training on the Councillors' Code of Conduct to remind them of the responsibilities of public office and remind them to review their register of interests regularly.

7. Role of the Councillor

- 7.1 Councillors and officers have different but complementary roles. Both serve the public, but councillors are responsible to the electorate, whilst officers are responsible to the Council as a whole.
- 7.2 The Court of Appeal has held that Planning Committees are not acting in a judicial or quasi-judicial role when deciding planning applications but "in a situation of democratic accountability". Planning Committee Members **must** therefore:
1. act fairly, openly and apolitically;
 2. approach each planning application with an open mind, avoiding pre-conceived opinions;
 3. carefully weigh up all relevant issues;
 4. determine each application on its individual planning merits;
 5. avoid undue contact with interested parties;
 6. ensure that the reasons for their decisions are clearly stated and
 7. consider the interests and well-being of the whole borough and not only their own ward.
- 7.3 The above role applies also to councillors who are nominated as substitutes to the Planning Committee. Equally, the conduct of members of any working

party or committee considering planning policy must be similar to that outlined above relating to the Planning Committee.

8. Role of the Planning Officer

- 8.1 Officers advise councillors and the Council and carry out the Council's work. A successful relationship between councillors and officers will be based upon mutual trust, understanding and respect of each other's positions.
- 8.2 Planning officers advise councillors impartially on planning policy and planning applications. They will:
1. provide professional, objective and comprehensive advice;
 2. provide a clear and accurate analysis of the issues;
 3. advise on the development plan and other material considerations;
 4. give a clear recommendation; and
 5. implement the Committee's/Council's decisions (including those made by officers under powers delegated to them).

9. Role of the Monitoring Officer (or representative)

- 9.1 The Monitoring Officer will give clear, impartial, and objective advice to councillors:
- on legal issues arising out of the conduct of the Committee's functions; and
 - regarding the implementation of the Committee's decisions and proposed courses of action
- 9.2 The Monitoring officer will implement the Committee's/Council's decisions so far as they require the completion of any legal agreements, institution/defence of any proceedings, issuing of notices etc.
- 9.3 The Democratic Services Manager (or representative) will also give clear, impartial, and objective advice to councillors as necessary on administrative issues arising out of the conduct of the Committee's functions.

10. Disclosure and Registration of Interests

Disclosable pecuniary interests (DPIs).

- 10.1 A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). Councillors, or their spouse/ partner, with a DPI in relation to any item on the Planning Committee agenda, may not speak on that item and should absent themselves from the debate and the vote. There is clear guidance in the

Councillors' Code of Conduct on what constitutes a 'disclosable pecuniary interest'. The Council has a publicly available register of councillors' interests.

Other Registrable Interests and Non-Registrable Interests

- 10.2 If a councillor has an Other Registrable Interest they must declare it at the meeting and must leave the meeting for the duration of the item. They may first speak on the item provided it is a matter on which the public also have a right to speak. Councillors should check with the Monitoring Officer if they are in any doubt. Examples of Other Registrable Interests include, but are not limited to:
- (a) membership of organisations to which the councillor has been appointed or nominated by the Council and in which the councillor holds a position of general control or management, or
 - (b) membership of, or holding a position of general control or management in, any body
 - that exercises functions of a public nature;
 - that is directed to charitable purposes; or
 - one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
- 10.3 Non-Registrable Interests may arise before or during a meeting and is an interest that may, in the mind of a reasonable observer, affect a councillor's objectivity or judgement of the public interest. These are matters that directly relate to a councillor's own financial interest or well-being, or that of a relative or close associate.
- 10.4 The interest must be disclosed at the meeting and the councillor may not take part in the debate or vote and must leave the meeting room. If the planning application is available for public speaking, the committee member may speak for up to four minutes before leaving the meeting room.
- 10.5 It is very important that councillors disclose any interests they may have in particular schemes at the earliest opportunity. This requirement relates to individual planning applications and planning policies and proposals, which are being developed in development plans, supplementary planning guidance or development briefs.
- 10.6 Interests must be disclosed by councillors before the Committee discusses the item concerned. Such disclosures are usually taken at the start of the meeting and are recorded in the minutes.

Officers' interests

- 10.7 It is also important for officers to disclose interests in writing to their Joint Executive Head of Service /Joint Strategic Director, if they consider that those interests might affect their objectivity. In such circumstances, officers shall take no part in any decision-making process which relates to or affects those interests.

- 10.8 The Council also holds a register of officers' interests, which is not available to the public.

Gifts and Hospitality

- 10.9 The Councillors' Code of Conduct sets out rules on acceptance of gifts and hospitality by councillors. There is also guidance for officers and a register is held by the Monitoring Officer.

11. Predisposition, Predetermination or Bias

- 11.1 It is entirely permissible for Committee Members, who are democratically accountable decision makers, to be predisposed towards a particular outcome. Nonetheless, they must address the planning issues before them fairly and on their individual merits. That means they can have a view on the application but must not make up their minds on how to vote before formally considering the application, listening to the officer presentation, any representations and the full debate.
- 11.2 Committee Members must have an open mind to the merits of a proposal before it is formally considered at the Committee meeting and they must be prepared to be persuaded by a different view in the light of any detailed arguments or representations concerning the particular matter under consideration.

12. Limiting discretion

- 12.1 Councillors being involved with a matter that they will later be called upon to take a decision on as a member of the Council can limit their discretion.
- 12.2 Pressure is sometimes put on councillors to comment on a matter before the meeting, either in the press or on social media. Councillors should not put themselves in a position where it appears they have already taken a view. Councillors should always say that they will consider all the facts and take a decision based on the merits of the case presented.

13. Members of more than one tier of local government

- 13.1 Provided a member of the Planning Committee has not acted at parish or county level, in so far as they will have predetermined the matter, then they may remain in the Committee meeting to speak and vote.
- 13.2 Councillors serving on other councils may reserve their right to change their position when more information is provided at the Planning Committee meeting. More information may become available in the Planning Officer's report, which will include all representations.

14. Development proposals submitted by the Council, councillors and officers

- 14.1 Planning applications submitted by individual councillors or officers will be determined by the Planning Committee and not under delegated powers in order to maintain propriety and transparency.
- 14.2 Any councillor submitting a planning application is likely to have a disclosable pecuniary interest and must follow the guidance set out in the Councillors' Code of Conduct.
- 14.3 Aside from minor Council applications, which can be approved under delegated authority, proposals for the Council's own development will be treated with the same transparency and impartiality as those of private developers.
- 14.4 The Council has a corporate duty to ensure that:
- (i) Its development management functions are undertaken by identified persons provided with the necessary resources and acting impartially and objectively;
 - (ii) any person acting or assisting in the handling of a planning application is prevented from being involved in promoting or assisting in the promotion of the application and/or the development; and
 - (iii) any person involved in promoting or assisting in the promotion of the development is prohibited from giving any instructions to, or putting any pressure upon, any person acting or assisting in the handling of the planning application, or from attempting to do so.
- 14.5 It is recognised good practice to ensure that portfolio holders do not sit as members of the Planning Committee given the potential conflict of interest that is likely to exist in respect of applications in respect of the Council's own developments or developments which directly affect the Council's land or property.

15. Lobbying and Negotiations

- 15.1 Lobbying is usual during the planning process and those affected by an application will seek to influence individual councillors and the Planning Committee. Councillors should expect to be contacted in this regard and should listen to all views.
- 15.2 Councillors may offer advice, for example suggesting to those lobbying that they write to the planning officer or register to speak at the Committee but should take care when being lobbied that any comments they make do not give the impression that they have predetermined the matter. Instead, they should make it clear that they will not make a final decision until they have heard all of the arguments at the Committee meeting.

- 15.3 Political group decisions must not be taken on planning applications and related matters and councillors should not lobby one another or agree with one another on how to vote.
- 15.4 Councillors should adhere to the Member/Officer Protocol at all times and should not attempt to influence or to apply pressure to officers in any way. (If a councillor is concerned about the recommendation or the advice a case officer is giving, the Joint Executive Head of Planning Development must be informed immediately.)
- 15.5 Councillors on the Planning Committee may receive correspondence from the public asking them to reject or grant an application. If the correspondence is received before the officer has completed their report, the councillor should direct the author to submit their representations via the website: [Search for information about a planning application - Waverley Borough Council](#).
- 15.6 If the correspondence is received after the officer has completed their report and before the Planning Committee meeting sits, the councillor should forward the correspondence to the relevant planning officer who will report on late submissions as part of their Update report or presentation to the Planning Committee.

16. Pre-Application Discussions including Planning Performance Agreements (PPAs)

- 16.1 Pre-application discussions with potential applicants are an essential part of the planning process and help identify problems and address issues before the submission of an application. They can also be used to identify the right means of engagement before and during the application process. Such discussions are led by officers and the Council has a paid pre-application advice service and PPA service in place to ensure all discussions take place correctly. Councillors should be cautious of being approached in an attempt to circumvent this normal process. If any enquiries are received about obtaining pre-application advice, the Councillor should direct the enquirer to the Council's website: [Apply for our pre-application advice – Waverley Borough Council](#). Pre-application advice is confidential until the submission of an application and the applicant's consent must be gained before disclosing the advice. If a Councillor takes part in the pre-application process, they must be mindful of this confidentiality.
- 16.2 If a potential applicant requests a meeting with a Councillor, either before or after a pre-application enquiry has been made, the Councillor should contact officers before agreeing. The officer will advise whether a meeting at this stage is appropriate. If a meeting does take place as a matter of course an officer should be present. These should generally be in exceptional circumstances so as not to undermine normal pre-application discussions and to ensure good use of officer and Councillor time.

- 16.3 For large scale development proposals, it is appropriate to include relevant Councillors; however, this will normally be a briefing from officers rather than as direct engagement with the developer. Initially it will be for the officer to determine whether this briefing should take place.
- 16.4 There should be a record of any meetings which take place. It should be agreed ahead of the meeting who will be responsible for taking notes/records (applicant/officer/ councillor etc). Before being finalised, those notes should be circulated to attendees to ensure transparency. A copy will then be placed on the pre-app file for record.
- 16.5 Occasionally, a third party may make a request to make an informal presentation to councillors on development proposals that do not form part of any formal planning application, and which do not fall within the formal Application or Pre-Application process. The Council has adopted a protocol to establish clear guidance to third parties and the Council in respect of such requests, and to promote an environment of openness and transparency.

17. Publicity

- 17.1 There are statutory requirements in place around advertising planning applications dependent upon the type of application received. These are primarily set out in the Development Management Procedure Order:
- The Town and Country Planning (Development Management Procedure) (England) Order 2015 ([legislation.gov.uk](https://www.legislation.gov.uk)).
<https://www.legislation.gov.uk/ukxi/2015/595/contents/made>
- 17.2 The Council will publish how it will carry out its duties to publicise applications in the Statement of Community Involvement which can be accessed on the Council's website.
- 17.3 Interested parties will have up to 21 days to respond with the exception of 'permission in principle' applications, where interested parties only have 14 days in which to respond. The Council cannot determine an application until this period has expired.
- 17.4 If an application is amended, the case officer will consider whether the extent of the changes requires a 're-consultation' and will determine the length of time, this will not normally be less than 7 days.
- 17.5 Anyone can respond to a planning application regardless of whether they have been formally notified. All comments received are made public as part of the planning application process (although sensitive information is redacted online)
- 17.6 Comments on an application should be made via the Council's website: [Search or comment on a planning application – Waverley Borough Council](https://www.waverley.gov.uk/commentonaplanningapplication) <https://www.waverley.gov.uk/commentonaplanningapplication> where progress of the application can also be tracked. If that is not possible, comments may

be submitted by email to: planningenquiries@waverley.gov.uk or by letter to the Joint Executive Head of Planning Development.

- 17.7 The purpose of this process is to seek people's views on the application. It is not possible to respond to individual written representations or enter into correspondence.
- 17.8 The number of representations received can affect whether an application is referred to Planning Committee

18. Planning Applications

- 18.1 All planning applications are determined either under delegated powers by officers or by the Planning Committee.
- 18.2 Planning applications are designated by statutory classes set out by regulation and these fall into three main categories:
- Major applications
 - minor applications
 - householders and others (these include listed building consent and advertisement consent applications)

Major development

- 10+ dwellings/over half a hectare/buildings exceeding 1000 sq. metres
- Office/light industrial – 1000+ sq. metres/1+ hectare
- Retail – 1000+ sq. metres/ 1+ hectare
- Gypsy/traveller site – 10+ pitches
- Site area exceeding 1 hectare

Minor development

- 1-9 dwellings (unless floor space exceeds 1000 sq. metres or the site area exceeds half a hectare)
- Office /light industrial - up to 999 sq. metres/under 1 hectare
- General industrial – up to 999 sq. metres/under 1 hectare
- Retail – up to 999 sq. metres/ under 1 hectare
- Gypsy/traveller site – 0-9 pitches

- 18.3 Planning applications are referred to the Planning Committee in the following cases:
- Planning applications defined as 'major' by the Government (i.e. 10 or more units of residential accommodation, more than 1,000 sqm commercial floorspace and site area of more than 1 hectare) and which in the judgement of the Joint Executive Head of Planning Development have major strategic implications for the authority.
 - Planning applications where a Waverley Borough Councillor asks that the application be determined by the Planning Committee and puts

forward relevant planning grounds to the Joint Executive Head of Planning Development (councillor call-in).

- A householder application with 10 or more letters of representation with a view contrary to the officer recommendation.
- A major or minor application (non-householder) with 20 or more letters of representation with a view con contrary to the officer recommendation.
- Any planning application where the Council is the applicant.
- Any planning application where the applicant is a Waverley Borough Councillor or employee, including Joint Officer, or their relative.
- Any planning application which is required to be referred to the Secretary of State.

18.4 Councillors are notified of all planning applications within their wards via the weekly lists. Councillors' comments received will be taken into account in determining the application. At any point prior to the Committee meeting, should councillors wish to give an opinion, they are advised to state that this is their opinion based upon the information currently available, which may change in the light of additional information. Councillor comments are kept on file.

18.5 In addition to planning applications, the Council also deals with other types of applications which are not subject to referral to Planning Committee as they deal with matters of fact rather than planning policies and/or are subject to determination deadlines which can result in 'deemed' consent being granted. These include:

- certificates of lawful development/use (existing and proposed)
- applications for prior approval or prior notification

19. Councillor 'call-in' to Planning Committee

19.1 Councillors should use call-in powers responsibly. There are likely to be many applications where Councillors may disagree with part of the recommendation. However, applications should only be referred to Planning Committee where there are strong planning grounds to do so. Referrals should not take place because an alternative development would be preferred or because of prior conduct of the applicant (including because the application is retrospective). By getting involved at an early stage, councillors can have their opinions and suggestions considered by officers and there is the opportunity for discussion.

19.2 The process for councillors to refer applications to the Planning Committee is set out in Annex 1.

19.3 Exclusions to this process are all Lawful Development Certificate applications; Prior Approval applications; Section 211 notifications (Trees in Conservation

Areas), and Statutory Consultations from other authorities including Surrey County Council.

- 19.4 The officer report is confidential until it is published on the Planning Committee agenda, if it is referred to Committee, or until the application is determined under delegated powers, and must not be shared or forwarded to the applicant, agent, Parish Council, or third parties before this unless forwarded by the planning officer.
- 19.5 If, in the opinion of the Joint Executive Head of Planning Development a call-in request is not based on planning grounds then the request can be refused; however, officers will always explain their reason to the relevant Councillor.
- 19.6 Councillors who have exercised call-in will normally be expected to speak to the item when it is considered by the Planning Committee provided that, in the case of Planning Committee members, they have not demonstrated a predetermination.

20. Site Visits by Planning Committee members

- 20.1 Committee site visits may be conducted either before the meeting of the Planning Committee at which the application is to be determined following a request by a councillor, or the Committee may decide at the meeting to conduct a site visit. However, there may be circumstances where the Joint Executive Head of Planning Development considers the application to be of sufficient scale/importance that a site visit should be arranged irrespective of any request by Councillors. All formal site visits should follow the provisions of the Site Visit Protocol set out below.

Pre-Committee meeting Site Visits requested by a councillor

- 20.2. Pre-Committee meeting Site Visits assist with the debate at the meeting and avoid further delay to the determination of the application. Such site visits may be initiated on request by a councillor:
 - when making a call up request, or
 - following the publication of the Committee agenda by detailing their request to the Democratic Services Officer by no later than midday on the Thursday of the week prior to the Planning Committee meeting.
- 20.3 The request for a site visit is discussed in liaison with the Chair of the Planning Committee and Joint Executive Head of Planning Development at the Chair's Briefing (which is generally held in the afternoon on the Thursday prior to the Planning Committee meeting). If the Chairman and Joint Executive Head of Planning Development agree the request for a site visit, the Democratic Services Officer will confirm the site visit details with the Planning Committee members and the applicant.
- 20.4 Pre-Committee meeting site visits are scheduled to be held on the Tuesday before the Planning Committee meeting commencing at a time to be agreed with the Committee Chair.

Site Visits agreed by the Committee

- 20.5 Site visits can also be requested at a Planning Committee meeting. Reasons should be given as to why a Pre-Committee meeting site visit was not requested. Councillors must be mindful of the delay such a deferral will cause to the application and the implications, including possible appeal against non-determination. If the request is supported by the Committee, the application will stand deferred to enable a site visit to be scheduled at an agreed date and time. The Democratic Services Officer will confirm the site visit details with the Planning Committee members and the applicant.
- 20.6 The Committee minutes will show the planning reasons for the decision to hold a site visit.

Site visit protocol

- 20.7 In all cases site visits should only be held in circumstances in which it is not possible for councillors to make an informed decision on the application without seeing the site for themselves. Examples of such circumstances include:
- the impact of the proposed development is difficult to visualise from the plans and any supporting material, including photographs taken by officers.
 - the comments of the applicant and objectors cannot be expressed adequately in writing.
- 20.8 Site visits are generally not appropriate in cases where purely policy matters are at issue.
- 20.9 A planning officer will attend all formal site visits.
- 20.10 Site visits are:
- fact finding exercises.
 - not part of the formal consideration of the application and, therefore, public rights of attendance and speaking by applicants and objectors do not apply.
 - to enable officers to point out relevant features.
 - to enable councillors to ask questions on site for clarification. However, discussion on the merits of the application will only take place at the Planning Committee meeting when all parties will be present.
- 20.11 Councillors should not allow themselves to be addressed by individual parties, members of the public or applicants at formal site visits.
- 20.12 The Planning Committee Chair or, in their absence, the Vice-Chair must maintain control over the conduct of the site visit which, whilst not part of a formal meeting of the Planning Committee, must be conducted as a single meeting and in an orderly fashion.

20.13 Planning Committee members who are unable to attend a formal site visit may, if they wish, visit the site informally but should be mindful of the provisions of the Site Visit protocol. Any councillor who visits the site alone is only entitled to view the site from public vantage points and has no individual rights to enter private property. If alone, it is not good practice to enter the application site or any neighbouring property, even if invited by the owner, as this can lead to the perception that the councillor may no longer be impartial.

21. Planning Committee

21.1 The Planning Committee is made up of 15 borough councillors. Members of the Planning Committee may be substituted by any other member of their political Group who has attended the required mandatory planning training.

21.2 Planning Committee meetings are held in the Council Chamber, and usually take place on a Wednesday evening beginning at 6pm. Sometimes there are special meetings to discuss major or strategic applications.

21.3 Agendas are published on the Council's website five clear working days before each meeting.

21.4 Any member of the public can attend Planning Committee meetings and listen to the discussions about applications and other matters on the public part of the meeting agenda.

21.5 The Planning Committee makes decisions on about 5% of the planning applications the Council receives. The Joint Executive Head of Planning Development decides all other applications under delegated powers.

21.6 All meetings are open to the public (s100 Local Government Act 1972). Where there are aspects of a matter which are required to be dealt with in private, the Committee may pass a resolution to exclude the public from the meeting (s100A(4) LGA 1972). That resolution must identify the matters to which it refers and state the description of the "Exempt Information" under the relevant paragraph(s) of Part 1 of Schedule 12A to the LGA 1972.

21.7 Unless otherwise decided by a majority of councillors present and voting at the meeting, all meetings shall finish by no later than 10.30pm. Any outstanding items not completed by the end of the meeting shall be adjourned to a reconvened meeting or the next ordinary meeting of the Committee.

Procedures for dealing with planning applications at Planning Committee

21.8 Councillors (who are not Planning Committee members) who wish to speak on a planning application on the agenda, whether the site is inside or outside of their ward, may do so with the consent of the Chair of the Committee. They must register their wish to speak with the Democratic Services Officer by midday on the day of the Planning meeting and, if speaking in that capacity, cannot attend the meeting as a substitute.

- 21.9 Committee members wishing to speak for or against an application situated in their ward may for that item step away from the committee and speak from the seat allocated to ward councillors when they address the Committee but shall not be entitled to speak for more than four minutes.
- 21.10 Each speaker, including councillors or members of the public, may address the Planning Committee for a maximum of four minutes. In exceptional circumstances, the chairman can agree to speakers having longer than four minutes to address an item. An example of this would be a strategic site with multiple and complex issues.
- 21.11 Under Council Procedure Rules, the Chairman has the right to decline to hear anyone behaving improperly at the meeting.
- 21.12 No additional written evidence or information such as photographs, plans or models may be circulated at the meeting.
- 21.13 Officers might occasionally defer an application following publication of the agenda.
- 21.15 The Planning Committee might defer an application at the meeting. A motion may be proposed and seconded at any time during the debate to defer or adjourn consideration of an application. The Committee will do this if members feel additional information is required, or if they would like to make a formal committee site visit.
- 21.16 If the Committee defers an application, the original public speakers will be invited to speak at the meeting when the Planning Committee considers the application again.
- 21.17 Councillors, objectors, the applicant and (where relevant) parish councils will be notified when an application is coming back to the Planning Committee following deferral.

22. Councillor and officer behaviour in committee meetings

- 22.1 Councillors and officers will afford courtesy and respect to one another, and to all of those attending committee meetings and/or making representations.
- 22.2 Councillors will not pass notes in any format between themselves or others during the meeting.
- 22.3 Committee members and substitute members will not deliver pre-prepared speeches in support of, or in opposition to, any application giving the impression that they have pre-determined their decision.
- 22.4 It is considered acceptable for Committee members and substitute members to have prepared bullet points for any contributions they may make in advance of a meeting.

23. Webcasting

- 23.1 All Planning Committee meetings will be webcast. Webcasts of meetings will be suspended in circumstances where the Committee considers confidential or exempt information during the consideration of any matter.

24. Reports containing confidential or exempt information

- 24.1 Reports or sections of reports published on pink paper marked “Restricted” will be subject to confidentiality and may not be viewed or shared with any other person outside of the Council.
- 24.2 On occasion, owing to the sensitivity of a matter, the confidential item will only be handed out in hard copy at the meeting itself. Councillors will be given sufficient time to read through the report prior to debating the item and coming to a conclusion.
- 24.3 Councillors must ensure that their private papers are handed back to the Democratic Services Officer at the end of the consideration of that item. This is essential so that the papers can be confidentially shredded.

25. Public Speaking at Planning Committee

Criteria to trigger the public speaking scheme

- 25.1 Public speaking at the Planning Committee meetings will be permitted in respect of a planning application and any other related consent applications to be determined by the Committee, where an application due to be considered by the Planning Committee receives 5 or more letters of support, OR 5 or more letters of objection by the deadline specified for representations.
- 25.2 In order to be counted in relation to the public speaking scheme, the representations must be from separate households.
- 25.3 Where an application triggers the public speaking scheme all those who have submitted written representations in compliance with paragraph 25.2 above will be notified and invited to register to speak at the relevant committee meeting.

Allocation of speaking

- 25.4 A maximum of three persons will be permitted to speak on each application, as follows: one person speaking in objection to the application one person speaking on behalf of the relevant town or parish council one person speaking in support of the application (usually the applicant or their agent)
- 25.5 Subject to the above, the spaces will be allocated on a first come, first served basis. All applications to speak must have been registered no later than noon on the Friday preceding the Planning Committee meeting (usually on a Wednesday).

- 25.6 The registered speaker may appoint another person to speak on their behalf, or to share their time with other speakers.

Speaking at the meeting

- 25.7 A maximum of four minutes will be allowed for each speaker.
- 25.8 If the speaker has chosen to share their allocated time with another speaker the time allocation will run continuously.
- 25.9 Public speaking will follow the presentation of the planning application by the Planning Officer and precede the Committee's debate on the application. Members of the public speaking in opposition to an application will speak before those speaking in support of an application.
- 25.10 Speakers must confine their statement to relevant material planning issues. There is no opportunity to display maps, photographs, circulate documents or ask questions of others at the meeting.
- 25.11 If a decision on an application is deferred, any objectors or supporters registered to speak on that item will have the opportunity to speak again when the item is brought back to a future committee. If they do not wish to speak, the opportunity for others to register in line with the normal procedure will be afforded.
- 25.12 Applications will not be deferred because of the absence of an objector or supporter, or other person who has registered to speak.

26. Councillor representations on appeals against planning decisions

- 26.1 Where a councillor wishes to support an appellant on any appeal against a Council decision on a planning matter, that councillor shall give written notice of his or her intention to the Monitoring Officer and Executive Head of Service, as well as the appellant. Where the appeal is to be dealt with at an inquiry, the written notice shall be delivered not less than five working days before the start of the inquiry.
- 26.2 Councillors proposing to support an appellant at an appeal must in addition make it clear to the planning inspector that they are appearing in their personal capacity and not as a spokesperson for the Council.

Annex 1: Process for Councillor ‘call-in’ to Planning Committee

Applications to be included in this process:

- All planning applications, including S.73 applications
- Listed building consent applications
- Advertisement consent applications
- Tree Work Applications for trees subject to a TPO

Applications excluded from this process:

- Lawful Development Certificate applications
- Prior approval applications
- Section 211 notifications (Trees in Conservation Areas)
- Consultations from other authorities

Process

Upon validation of relevant applications, they will be included on the weekly list of planning applications.

Councillors will be requested to make one of the following responses:

- No comments
- I have concerns/see potential benefits (these must be planning considerations, directly related to the applications) and would like the application referred to committee. Please indicate planning concerns/benefits: ...
- I consider that due to the specific circumstances/scale of the development it will have wide ranging planning implications and I would like the application referred to committee. Please specify the nature of the wide-ranging implications: ...
- I do not wish to refer the application to Committee, but I would like the following comments/suggestions for conditions taken into consideration: ...

Where there is more than one Councillor representing a ward, all the ward councillors are able to comment.

Responses should be sent via email directly to the case officer and copied to PlanningEnquiries@waverley.gov.uk to ensure that it is recorded on the file and not missed due to officer absence. The request will be detailed in the officer’s report.

Where comments are raised that are NOT material planning considerations the case officer will advise the Councillor of this before drafting the report.

Determination/referral to Committee

The referral of the application MUST have regard to the Councillor(s) response and the following scenarios may occur:

- Where “No comments” are specified; or where no councillor response is received, the application will proceed under delegated powers. No further councillor contact required.
- Where a Councillor has made a comment the case officer will include it in the delegated report and notify the Councillor.
- Where the Councillor response is a request to refer to Committee, their request will be referred to in the committee report. Should the application be amended, the officer will notify the Councillor to see whether their request stands.

All requests for referral to Planning Committee will be subject to ratification by the Executive Head of Service (or Strategic Director).

Before the case officer writes the committee report, they shall contact the councillor to indicate what their recommendation on the application is likely to be and the reasons for it. This would enable the councillor to consider whether they still wish to call-up the application to Committee.

Notes:

- (1) A councillor who has requested an application to be called-in to Committee may, following further consideration, withdraw that request.
- (2) These referral measures do NOT affect the automatic thresholds for Committee referrals.

Part 5. Councillors' Planning Code of Good Practice

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October 2016

Introduction

The aim of this code of good practice; Is to help Members maintain high standards of conduct and 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.

The key purpose of Planning: to control development in the public interest, and in accordance with national and local policies unless material considerations indicate otherwise.

Your role as a Member of the Planning Authority: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process. This includes, where applicable, when they attend as an observer, participant or are part of decision-making meetings of the Council in exercising the functions of the Local Planning Authority or when involved on less formal occasions, such as meetings with officers or the public and consultative meetings. It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications and pre-application discussions. It also covers site visits by planning committee members.

If you have any doubts about the application of this Planning Code of Good Practice to your own circumstances you should preferably seek advice early from the Monitoring Officer or Deputy Monitoring Officer well before any meeting takes place or you become involved in the application process.

1. Relationship to the Waverley Members' Code of Conduct

Do apply the rules in Waverley Members' Code of Conduct first when involved with planning issues and discussions. Failure to comply could put you at risk of a complaint being made to the Monitoring Officer.

Do then apply the rules in this Planning Code of Good Practice, which seek to explain and supplement the Waverley Members' Code of Conduct in relation to planning. If you do not abide by this Code of Good Practice, you may put the Council at risk of a challenge to its decisions.

2. Development Proposals and Interests under the Waverley Code of Conduct for Members

Your interest could relate to a proposal's effect, either adverse or beneficial, on you, your employer or employee or a friend's or relative's property.

Do disclose the existence and nature of your interest at any relevant meeting, including informal meetings or discussions with officers and other Members. You should disclose your interest, preferably at the beginning of the meeting under the agenda item 'Declaration of Interests'. *Wherever possible, you should advise Democratic Services in advance of the meeting if you plan to declare an interest.*

If you only become aware of an interest during the meeting, you must declare it as soon as you can.

Do then act accordingly. Where your interest is a Disclosable Pecuniary Interest:

Don't try to represent your Ward views or call-in an application. Get another ward councillor or member of the Council, if appropriate, to do so instead. Under the new Code you can no longer speak if it is a public speaking item and you have a Disclosable Pecuniary Interest.

Don't seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a Councillor. This would include, where you have a Disclosable Pecuniary interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.

Do be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a Disclosable Pecuniary interest to an appropriate officer, in person or in writing, the Waverley Code of Conduct for Members places greater limitations on you in representing that proposal than would apply to a normal member of the public.

Do notify the **Monitoring Officer** in writing of your interest and note that: in the case of a personal application,

- notification should be made no later than submission of the application;
- any proposed approval will always be reported to the appropriate decision-making Committee for determination and not dealt with by officers under delegated powers; and
- it is advisable that you employ an agent to act on your behalf on the proposal when dealing with officers

Do ensure that when contacting an officer about your own proposals, or those of a person so closely connected to you could be seen as influencing your judgement, you must make clear that you are contacting the officer purely in a private capacity and not in your role as a councillor (e.g. Mr Brown not Councillor Brown)

Do if any doubts about proximity of your own property to an application site, contact the Monitoring Officer for clarification.

3. Fettering Discretion in the Planning Process.

Planning matters must be determined on their own individual merits, against the formal planning policy background. These considerations will be set out in the officers' reports, supplemented at the meeting. Accordingly, Members' should not decide how he/she will vote on a particular matter before it is considered at the meeting, but base their decision on the officer reports, additional information presented to the meeting and the debate.

Predetermination: The Localism Act provision on pre-determination gives greater leeway for a decision-maker to directly, or indirectly, indicate a view on a matter prior to a meeting. The decision-maker must still be seen to have an open mind, but the legislation does give greater scope for councillors to represent the views of residents and vote on certain issues. You can have a very strong predisposition for or against a particular application, but you must not have predetermined the matter. This means that you must not have made your mind up prior to the meeting.

Don't fetter your discretion and, therefore, your ability to participate in planning decision-making by making up your mind, or clearly appearing to have made up your mind (particularly in relation to an applicant or an external interest of lobby group), on how you

will vote on any planning matter prior to formal consideration of the matter at the meeting of the planning committee and before hearing the officer's presentation, and evidence and arguments on both sides.

Fettering your discretion in this way and then taking part in the decision could still put the Council at risk of a finding of maladministration and of legal proceedings on the grounds of there being a danger of **bias** or **pre-determination** or a failure to take into account all of the factors enabling the proposal to be considered on its merits.

Do be aware that you are likely to have fettered your discretion where the Council is the landowner, developer or applicant and you have acted as, or could be perceived as being, a chief advocate for the proposal. This would particularly apply to Portfolio Holders in relation to schemes within their Portfolio area. (This is more than a matter of membership of both the proposing and planning determination committees, but that through your significant personal involvement in preparing or advocating the proposal you will be, or perceived by the public as being, no longer able to act impartially or to determine the proposal purely on its planning merits).

Do also be aware that, whilst the Waverley Code of Conduct for Members provides for a presumption that you may regard yourself as not having a Disclosable Pecuniary interest in matters which relate to the organisations mentioned below, you must exercise your discretion in deciding whether or not to participate in each case and where:

- you have been significantly involved in the preparation, submission or advocacy of a planning proposal on behalf of another local or public authority of which you are a member; or a body to which you have been appointed or nominated by the Council as its representative;

or

- you are a trustee or company director of the body submitting the proposal and were appointed by the Council

In such cases you should always disclose a Disclosable Pecuniary Interest as well as Non-Pecuniary Interests and withdraw from the meeting at the appropriate time.

Do consider yourself able to take part in the debate on a proposal when acting on the part of a consultee body (where you are also a member of the Town/Parish Council, for example, or both a District/Borough and County Councillor), provided that:

- the proposal does not substantially affect the well-being or financial standing of the consultee body;
- your views are expressed on the limited information before you only;
- you reserve judgement and the independence to make up your own mind on each separate proposal, based on your overriding duty to the whole community and not just to the people in that area, ward or parish, as and when it comes before the Planning Committee and you hear all the relevant information; and
- you will not in any way commit yourself as to how you or others may vote when the proposal comes before the Planning Committee; and
- you disclose the Non-Pecuniary Interest regarding your membership or role when the Planning Committee comes to consider the proposals.

Don't speak and vote on a proposal where you appear to have fettered your discretion. You should withdraw.

Do leave the room if there is a risk of an appearance of bias to a member of the public. You can not stay in the room and just not vote.

Do explain that you do not intend to speak or vote and will be leaving the room because if you do participate, you could reasonably be perceived as having judged (or reserve the right to judge) the matter elsewhere. This will be recorded in the minutes.

4. Call-in Process

Do ensure that you comply with the rules for asking for an item to be presented to committee – within three weeks following the notification of the Waverley weekly list of planning applications, as a ward councillor (for the ward including all or part of the planning application site) you can request by email to the Head of Planning that an item be referred to a Planning Committee on relevant planning grounds. **Don't** ask for an item to be referred if you have a Disclosable Pecuniary Interest or there is a risk of you being seen as biased, for example if you have a very strong connection through a non-pecuniary interest.

With Town and Parish Council support in writing, you can also, as a ward councillor, request that an application be placed on the agenda for the next Area Planning Committee. You should not do this if you have a disclosable pecuniary interest or are at risk of being seen as biased.

5. Contact with Applicants, Developers and Objectors and the Pre-Application process.

Do refer those who approach you for planning, procedural or technical advice to the officers in the Planning Service.

Don't agree to any formal meeting with applicants, developers or groups of objectors unless an Officer can attend with you. If a meeting does take place, those present at the meeting should be advised from the start that the discussions will not bind you or the Council to any particular course of action. The meeting should be properly recorded on the application file.

Do remember that when attending planning presentations or exhibitions, these are for information gathering and clarification of issues, not for expressing views or opinions.

Do otherwise:

- ensure that you do not involve yourself in lobbying

- and

- report to the Head of Planning any significant contact with the applicant and other parties, explaining the nature and purpose of the contacts and your involvement in them, and ensure that this is recorded on the planning file.

6. Lobbying of Councillors

Do explain to those lobbying or attempting to lobby you that, whilst you can listen to what is said, doing so may lead to the perception that you are unable to act impartially and therefore it may affect your ability to participate in the Committee's decision making. To express an intention to vote one way or another or to express too firm a point of view on a particular matter amounts to the same thing and could lead to legal challenge.

Do remember that your overriding duty is to the whole community of Waverley and not just to the people in your Ward and, taking account of the need to make decisions impartially, that you should not improperly favour, or appear to improperly favour, any person, company, group or locality.

Do remember the need for consistency in determining planning applications made for any location in the Borough

Don't accept gifts or hospitality from any person involved in or affected by a planning proposal. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared to the Monitoring Officer on the electronic form as soon as possible and remember to register the gift or hospitality where the gift value is over £50 and the hospitality is over £100.

Do inform the Monitoring Officer where you feel you have been exposed to undue or excessive lobbying or approaches (including inappropriate offers of gifts or hospitality). The Monitoring Officer will in turn advise the appropriate officers to follow up the matter.

Do copy or pass on any lobbying correspondence you receive to the Head of Planning at the earliest opportunity so that it may be placed on file for consideration by other members or the public.

Do promptly refer to the Head of Planning any offers made to you of planning gain or constraint of development through a proposed s.106 Planning Obligation or otherwise. Do not attempt any informal negotiation or discussion

Do note that, unless you have a Disclosable Pecuniary interest, you will not normally be considered to have fettered your discretion or breached this Planning Code of Good Practice through

- listening to or receiving viewpoints from residents or other interested parties (though all parties should be given equal opportunities for access);
- making comments to residents, interested parties, other Members or appropriate officers, provided they do not consist of or amount to pre-judging the issue and you make clear you are keeping an open mind;
- seeking information through appropriate channels; or
- being a vehicle for the expression of opinion as a Ward Member, provided you explain your actions and make it clear that having expressed the opinion or ward view, you have not committed yourself to vote in accordance with those views and will make up your own mind having heard all the facts and listened to the debate at the decision-making meeting.

Do remember that anyone who is not present from the start of the consideration of a planning application, or leaves during one being considered, **must not** take part in debate or vote on the application as this could lead to a legal challenge that a member is closed to the merits of the arguments for or against the application and has made a decision without taking all of the relevant considerations into account.

7. Lobbying by Councillors

Don't become a member of, lead or represent an organisation whose primary purpose is to lobby to promote or oppose planning proposals. If you do, you will have fettered your discretion and placed yourself in a position where you have a perceived bias and have to

withdraw. Involvement in such activity before you were elected as a member could also be perceived by the public as a relevant consideration and you need to consider such a possibility before taking part in a planning determination.

Do feel free to join general interest groups which reflect your areas of interest and which concentrate on issues beyond particular planning proposals, such as the Victorian Society, CPRE, Ramblers Association or a local civic society, **but** disclose a personal interest where that organisation has made representations on a particular proposal and make it clear to that organisation and the Committee that you have reserved judgement and the independence to make up your own mind on each separate proposal. Simple membership of such organisations is less likely to give rise to a non-pecuniary interest than if you were actively involved in drafting any representation or held an office such as Chairman or Vice-Chairman.

Don't excessively lobby fellow Councillors regarding your concerns or views nor attempt to persuade them that they should decide how to vote in advance of the meeting at which any planning decision is to be taken.

Don't lobby or discuss how to vote on any application at any sort of political group meeting, or lobby any other Member to do so. Political group meetings should never dictate how Members should vote on a planning issue.

8. Site Visits

Do try to request a site visit prior to the Committee taking place in accordance with the site visit protocol.

Do try to attend site visits organised by the Council where possible, but do not attend if you have a disclosable pecuniary interest or there is a risk of the appearance of bias. .

Don't request a site visit unless you feel it is strictly necessary because:

- particular site factors are significant in terms of the weight attached to them relative to other factors or the difficulty of their assessment in the absence of a site inspection; or
- there are significant policy or precedent implications and specific site factors need to be carefully addressed.

Do ensure that any information that you gained from the site visit is reported back to the Committee, so that all Members have the same information.

Do ensure that you treat the site visit only as an opportunity to seek information and to familiarise yourself with the site.

Do ask the officers at the site visit questions or seek clarification from them on matters which are relevant to the site inspection.

Don't hear representations from any other party but factual information can be sought for clarification.

Do, where you are approached by the applicant or a third party, advise them that they should make representations in writing to the Council and direct them to or inform the officer present.

Don't express opinions or views to anyone.

Don't enter a site which is subject to a proposal other than as part of an official site visit, even in response to an invitation, as this may give the impression of bias. This does not

mean that you can not simply observe the property or site from the roadside, but should you do so, don't be drawn into any discussion about the proposal with any party.

Don't allow members of the public to communicate with you during the Committee's proceedings (orally or in writing) as this may give the appearance of bias, and undermines the transparency of the decision-making process.

9. Officers

Don't put pressure on officers to put forward particular recommendations. (This does not prevent you from asking questions or submitting views to the Head of Planning which may or may not be incorporated into any committee report.) This could be regarded as a Breach of the Code.

Do involve yourself in pre-application discussions with the case officer but recognise that officers are part of a management structure and Members should only discuss a proposal, outside of any arranged meeting, with a Head of Service or those officers who are authorised by their Head of Service to deal with the proposal at a Member level - in accordance with the Officer/Member Protocol.

Do recognise and respect the requirement that officers involved in the processing and determination of planning matters must act in accordance with the Council's Code of Conduct for Officers and their professional codes of conduct, primarily the Royal Town Planning Institute's Code of Professional Conduct. As a result, planning officers' views, opinions and recommendations will be presented on the basis of their overriding obligation of professional independence, which may on occasion be at odds with the views, opinions or decisions of the Committee or its Members.

10. Pre-Application discussions

Councillors have an important role to play in pre-application discussions. The Localism Act has given Councillors much more freedom to engage in pre-application discussions. Nevertheless, in order to avoid perceptions that Councillors might have fettered their discretion, such discussions should take place within clear published guidelines.

Do ensure Officers are present with you in pre-application meetings. If you do speak to applicants do ensure clarity that the discussions will not bind the Council to making a particular decision and you should avoid giving separate advice on the development plan or material considerations without officers in attendance. In any case, a written note should be made of all meetings.

Do note that the Council has other mechanisms to involve you in pre-application discussions such as developer presentations to Committees (e.g. technical briefings and Development Control Consultative Forums) which have the advantage of being held in public for transparency.

11. Decision-Making

Do come to meetings and participate only if you are familiar with the written report on each item.

Do come to meetings with an open mind and demonstrate that you are open-minded.

Do comply with Section 38(6) of the Town and Country Planning Act 1990 and make decisions in accordance with the Development Plan “unless material considerations indicate otherwise”.

Do come to your decision only after due consideration of all of the information reasonably required upon which to base a decision. Remember that planning law requires determination to be based on planning consideration and not political or Council priorities. If you feel there is insufficient time to digest new information or that there is simply insufficient information before you, request the further information you seek. If necessary, defer or refuse.

Don’t vote or take part in the meeting’s discussions on an item unless you have been present to hear the entire debate, including the officer’s introduction to the matter.

Do have recorded the reasons for a proposal that the Planning Committee defers any proposal for a site visit.

Do make sure that if you are proposing, seconding or supporting a decision contrary to officer recommendations or the development plan that you clearly identify and understand the planning reasons leading to this conclusion/decision. These reasons must be given prior to the vote and be recorded. Be aware that the resulting decision may have to be justified by evidence at a planning appeal in the event of any challenge.

12. Training

Don’t participate in decision-making at meetings dealing with planning matters if you have not attended the mandatory planning training prescribed by the Council.

Do attend any training and other specialised sessions provided, to ensure that members’ judgements have been based on proper planning considerations. These will be designed to extend your knowledge of planning law, regulations, procedures, Code of Good Practice and the Development Plans beyond the minimum referred to above and thus assist you in carrying out your role properly and effectively. This will be provided as part of the Induction process together with refresher courses.

[October 2016]

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Initial Draft Memorandum of Understanding

- Officers will speak with Councillors and highlight applications that are receiving a number of objections
- Councillors are invited to contact officers at any time to discuss applications
- Officers to contact wards councillors to confirm that a planning application will be considered by Committee as early as possible
- Officers will arrange briefings to all councillors on complex applications
- Officers will arrange a short meeting with ward councillors to discuss appeals for new residential development (1 dwelling or more)

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Waverley Borough Council

Report to: Standards & General Purposes Committee

Date: 3 July 2023

Ward(s) affected: All

Report of Director: Transformation and Governance

Author: Susan Sale, Joint Executive Head of Legal & Democratic Services

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Report Status: Open

Review of the Waverley Borough Council Constitution

1. Executive Summary

- 1.1 There is a statutory obligation upon every Local Authority to have a constitution and to both maintain and publish it. It is considered good practice to keep the constitution under constant review and for councillors to consider a more formal review on an annual basis.
- 1.2 This report asks the Standards & General Purposes Committee to establish, jointly in conjunction with Guildford Borough Council's Corporate Governance & Standards Committee, a new Joint Constitutions Review Group (JCRG), with an overall objective of aligning key parts of the Councils' respective constitutions, where appropriate to do so.

2. Recommendations to Committee

- 2.1 That the Committee agrees to establish, jointly in conjunction with Guildford Borough Council's Corporate Governance and Standards Committee, a new Joint Constitutions Review Group (JCRG).
- 2.2 That the draft terms of reference of the Constitutions Review Group, as set out in **Appendix 1** to this report, be approved. That the Committee note that the purpose of the Constitutions Review Group will be to review the Waverley Borough Council Constitution, alongside the Guildford Borough Council Constitution, and to report back with their recommendations to both the Corporate Governance and Standards Committee at Guildford and the Standards and General Purposes Committee at Waverley. This Committee will then have the opportunity to consider any recommendations from the Constitutions Review Group relating to the Waverley Borough Council constitution and may make appropriate recommendations to the Council.
- 2.3 That the Committee appoints four councillors to the Constitutions Review Group and notes that Guildford Borough Council will also be invited to appoint four Councillors to the Group from their Corporate Governance and Standards Committee. That the Committee, from among those councillors they appoint, appoints a co-chairman of the Constitutions Review Group.

3. Reason(s) for Recommendation:

- 3.1 To commence work on the review of Waverley Borough Council's Constitution, and to do so in collaboration with partners from Guildford Borough Council, with an overall objective of aligning key parts thereof, where appropriate to do so.

4. Exemption from publication

- 4.1 No part of this report is exempt from publication.

5. Purpose of Report

- 5.1 This report asks the Committee
- (a) To consider establishing a new Joint Constitutions Review Group, in conjunction with Guildford Borough Council's Corporate Governance and Standards Committee, and
 - (b) To make appointments to such a Joint Constitutions Review Group.

6. Strategic Priorities

- 6.1 The work of Councillor task or working groups assist in the delivery of the Council's Corporate Plan priorities.

7. Background

- 7.1 Following the commitment by both Guildford and Waverley to collaborate and the establishment of a Joint Management Team, with the prospect of further collaborative proposals coming forward, the benefits of aligning the governance processes within the respective Constitutions, where appropriate to do so, is becoming increasingly apparent.
- 7.2 Accordingly, the Committee is asked to agree that a Joint Constitutions Review Group, comprising councillors nominated both by this Committee and Guildford's Corporate Governance & Standards Committee, be established to meet and consider constitutional matters jointly. The overarching role of the Joint Constitutions Review Group will be to examine, review, and report back initially to this Committee and Guildford's Corporate Governance & Standards Committee on any matter relating to the Constitutional arrangements of both councils. Each Council will then have the opportunity to debate, and decide upon, any changes to their own Constitution. It is anticipated that ultimately the two Constitutions will always differ in

some aspects to reflect the preferences of each Council, but that, in matters pertaining to officer accountabilities are likely to be the same.

- 7.3 The Committee is invited to consider and approve the draft terms of reference of the Joint Constitutions Review Group attached as **Appendix 1** to this report. The Committee is also invited to make appointment of four Waverley Borough Councillors to the Review Group; the membership does not have to be politically balanced but it may be useful to represent the primary political groups on the Review Group. Appointments do not have to be made from the membership of the Standards and General Purposes Committee, but the agreement of any Councillor should be sought prior to their appointment by this Committee.

8. Equality and Diversity Implications

- 8.1 The Joint Constitution Review Group will be responsible for having due regard to the requirements of the Public Sector Equality Duty (Equality Act 2010) when making any recommendations concerning constitutional arrangements.

9. Financial Implications

- 9.1 There are no financial implications arising from this report. Any proposals, projects, or suggestions from the groups with financial implications will either be contained within approved budgets or considered as part of the Service and Financial Planning cycle.

10. Legal Implications

- 10.1 There is no legal requirement to establish working groups or task groups, but they can be useful to support and inform the work of Council Committees. There is no legal requirement for them to be politically balanced.

11. Human Resource Implications

11.1 Currently, we are able to service the proposed working group from within existing staffing resources in the Democratic Services team.

12. Summary of Options

12.1 The Committee is invited to consider formally establishing, in conjunction with Guildford's Corporate Governance & Standards Committee, a new Joint Constitutions Review Group in accordance with the draft terms of reference attached as **Appendix 1**.

13. Background Papers

Waverley Borough Council Constitution

14. Appendices

Appendix 1: Draft Terms of Reference of the proposed Joint Constitutions Review Group

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Joint Constitutions Review Group

Draft Terms of Reference

Composition of the Joint Constitutions Review Group (“the Group”)

The Group is to be established jointly by Guildford Borough Council’s Corporate Governance & Standards Committee and Waverley Borough Council’s Standards & General Purposes Committee. Each committee shall appoint four members to the Group. The appointed members do not have to be members of the committee appointing them. Political balance rules do not need to apply.

Quorum: 4 (subject to each council being represented at a meeting of the Group by at least two members)

Substitutes: Substitutes may be appointed. Any appointed member of the Group may be substituted by any other member of their political group on the Council they represent.

Chairman: Each committee referred above shall appoint a co-chairman of the Group from among their four appointed members. Meetings of the Group shall be chaired alternately between the respective co-chairmen.

Place of Meetings: Meetings of the Group may be held remotely or in person. If the Group opts to meet in person, the venue for meetings shall normally alternate between the two councils with the host co-chairman chairing the meeting.

Frequency of Meetings: As and when required.

Servicing the Group: The servicing of the Group shall be agreed between the Councils’ Democratic Services Managers.

Role and Function

To examine, review, and report back initially to the Corporate Governance & Standards Committee and the Standards & General Purposes Committee on any matter relating to the Constitutional arrangements of both councils, or either, council.

It is expected that the Group shall reach its recommendations through consensus. If consensus cannot be reached, a vote shall be held and the matter determined by a majority, provided that, where a matter relates to the Constitution of only one authority, the majority of those representatives of the relevant Council shall be part of that majority. If the overall majority of those present and voting does not include the majority of the relevant Council, then the decision shall stand referred to the Corporate Governance and Standards Committee at Guildford Borough Council or the Standards and General Purposes Committee at Waverley Borough Council, as appropriate, for determination. Where a majority decision on any recommendation cannot be made, the chairman or person presiding shall have no second or casting vote.