

Eden District Council

**Council
20 April 2017**

Review of the Code of Planning Conduct and Practice

Reporting Officer: Deputy Chief Executive

1 Purpose of Report

- 1.1 To review Eden District Council's ("the Council's") Code of Planning Conduct and Practice in relation to the operation of 'minded to' decisions. The subject matter was considered at the Planning Committee meetings of 15 December 2016 and 19 January 2017 and Scrutiny Co-ordinating Board on 6 April 2017.

2 Recommendation:

<p>That Members consider the proposed changes to the Council's Code of Planning Conduct and Practice set out as Appendix 1 to this report with a view to making a recommendation to Council that the suggested changes be approved.</p>

3 Report Details

- 3.1 Planning Committee currently operates in accordance with the Council's Code of Planning Conduct and Practice ("the Code"). This provides comprehensive guidance to Members and Officers in relation to best practice in achieving high standards of conduct and practice in relation to the processing and determination of planning applications. Generally the Code works well.
- 3.2 One area of potential contention is the operation of the Code in respect of decisions which are contrary to officer recommendations. In circumstances when Members wish to make a decision contrary to officer recommendations the current practice as set out at Paragraph 15(3) of the Code provides that such a decision shall be one of 'minded to' nature and no definitive planning decision can be made at the initial Planning Committee meeting. The matter under consideration should be deferred on the basis of being a 'minded to' decision. Members of the Committee then re-convene for a later Planning Committee which only deals with that application. Supporters and objectors are advised at the meeting and in a supplementary letter from the Planning team that there will be no further public participation at the re-convened meeting, any additional information or representations should be sent to Committee Members and the Planning team during the intervening time period. At the re-convened Committee there is no further means for public participation and Members proceed immediately upon receiving the officer's updated report to a proposal, debate and determination of the planning application.

- 3.3 At the later Planning Committee meeting only Members who debated the application at the previous Committee are entitled to take part in the discussion and vote. In such circumstances there is no provision for substitution of Members who may be unable to attend due to sickness or other commitments.
- 3.4 Details on internal complaints made by members of the public who have been involved with or affected by proposed development are confidential. However, a theme running through recent complaints is that the 'minded to' procedure is unclear to members of the public. Members of the public who are not familiar with the planning system can be led to the conclusion that a 'minded to' decision is tantamount to a final decision. When, as is permitted, Members do not vote at the subsequent Planning Committee in accordance with the 'minded to' decision members of the public can be left feeling aggrieved.
- 3.5 There are merits with the 'minded to' procedure. It is designed to enable Members to make a decision with full possession of all of the advice and information, thereby reducing potential risk of challenge or the overturning of a refusal by the Planning Inspectorate.
- 3.6 Suggested amendments to the Code are attached as Appendix 1 to this report. In the process of reviewing Paragraph 15(3) of the Code it is also considered appropriate to update the document to reflect the changes in job descriptions. At paragraph 7(1) reference to the now defunct Audit Commission has been deleted. At paragraph 16(2)(b) there has been a deletion of reference to outdated wording in relation to personal and prejudicial interests which has been superseded by reference to disclosable pecuniary interests under the Localism Act 2011
- 3.7 Any changes to the Code will need to be approved by Council as an amendment to the Constitution. Safeguards can be practically provided in that Members can at any time seek a brief adjournment in order to develop valid reasons before making a proposal contrary to officer's recommendations. If the suggested changes are approved by Council a training session could be provided to the Planning Committee highlighting the following:
- that if a Member has any concerns relating to the proposal they can contact the officer and receive guidance on the recommendation and whether there is scope for the recommendation to be considered differently through the development plan and any other material planning considerations;
 - to re-iterate the importance of coming up with robust reasons for a decision;
 - reminding Members of the consequences of the Council losing appeals for example costs, reputation, and in extreme cases being placed by the government into special measures.
- 3.8 At the 15 December 2016 Planning Committee, Members considered this subject matter and resolved to defer the matter in order to receive further information about a scrutiny review of the planning process that had

previously been conducted and which reviewed amongst other matters, the operation of 'minded to' decisions. Members resolved that consideration of the proposed changes to the Council's Code of Planning Conduct be deferred to allow more information about the previous scrutiny review of the planning process. Paragraphs 3.9 to 3.16 below set out the chronology of members' previous deliberations on this subject matter.

- 3.9 A scrutiny review was overseen by the Head of Planning Services and Communities Director. The review report was considered by the Scrutiny Co-ordinating Board on 12 September 2013. This report advised that the process should be retained, its only mention of the minded to procedure was as follows,
- "Minded to' decisions ... build in time constraints prior to the final decision being made, these contribute to the time taken to determine applications but are considered to add value to the process."
- 3.10 The minute of the Scrutiny Co-ordinating Board of 12 September 2013 does not mention the 'minded to' procedures and amongst other matters the Board noted the report.
- 3.11 The Executive considered the review report on 1 October 2013 and similarly noted the report, amongst other matters. The intention at the time was that review group should be reconvened in a year's time but this did not happen, instead a variety of other matters overtook this intended action.
- 3.12 Planning Committee on 14 August 2014 considered a report titled 'Complaint Hearing Recommendations - Minded to Process'. This indicated that a number of complaints had been considered by Human Resources and Appeals Sub-Committees in relation to the minded to procedure and recommended that the process be reviewed in light of this. The issue was referred to the Accounts and Governance Committee with a recommendation to modify the Planning Code of Conduct.
- 3.13 The Accounts and Governance Committee on 25 September 2014 considered a report titled 'Complaint Hearing Recommendations - Minded to Process' which recommended amendments to the minded to process but with the process being retained overall. This was referred to Council.
- 3.14 Council on 23 October 2014 considered a report titled 2014: Council - 'Minded To' Process'. This contained the recommendations from the Account and Governance Committee that the process be retained with provisions. Council resolved to defer the report to allow the Planning Committee to consider the 'minded to' process in greater detail.
- 3.15 Planning Committee on 13 November 2014 considered replacing the 'minded to' process with a deferral process. The procedure that was recommended at that time is set out as Appendix 2 to this report for information.
- 3.16 Council on 4 December 2014 considered a recommendation that the revisions to the Code of Planning Conduct recommended by the Planning Committee of 13 November 2014 be adopted. Council resolved that the item be deferred to allow a training event to be offered to all Members on the

mind to process to hear from an external trainer and another local authority that does not use the process.

- 3.17 No further action was taken in respect of the matter. Whilst this is unfortunate, it is relevant to note that the Deputy Chief Executive and the Planning Services Development Manager have extensive previous experience of working for local planning authorities which do not operate a “mind to” procedure. If there is still a requirement for a training session then that could be provided “in house”.
- 3.18 The Local Government Association’s document entitled ‘Probity in Planning- The Role of Councillors and officers-revised guidance note on good planning practice for councillors and officers dealing with planning matters’ does not recommend the use of the “mind to” procedure.
- 3.19 Having regard to the above additional information Planning Committee on 19 January 2017 recommended that the changes to the Code of Planning Conduct and Practice are set out as Appendix 1 to this report be recommended to Council for approval subject to appropriate consultation with the Scrutiny Co-ordinating Board.
- 3.20 The Deputy Chief Executive subsequently discussed the matter with the Chairman of the Scrutiny Co-ordinating Board. She requested that a report on this matter be brought to the Board to enable it to make its own recommendations to Council. At the time of writing, having regard to report deadlines, the Scrutiny Co-ordinating Board is yet to consider the matter. Members will be updated upon the views of the Scrutiny Co-ordinating Board from its meeting of 6 April 2017 in advance of the meeting of Council of 20 April 2017.

4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
- Decent Homes for All
 - Strong Economy, Rich Environment
 - Thriving Communities
 - Quality Council

5 Implications

5.1 Legal

- 5.1.1 The Constitution at Part 2, Article 14 provides that changes to the Constitution will only be approved by the full Council on various grounds, two of which are relevant for current purposes:
- After consideration by the proposal by the Accounts and Governance Committee following a report from the relevant officer; or
 - On a report direct to Council by the Monitoring Officer.

- 5.1.2 In this case the Deputy Chief Executive has discussed the matter with the Chairman and Vice Chairman of Accounts and Governance Committee and they are content for this matters to be considered by Planning Committee with any recommendations to be considered by full Council.
- 5.1.3 The above proposed route of decision will enable the Committee for which the subject matter is most relevant to make appropriate recommendations to Council.
- 5.1.4 Article 14 of the Constitution gives delegated powers to the Deputy Chief Executive as Monitoring Officer to make minor changes, such as updating job titles and make consequential changes arising out of changes in legislation. Whilst the changes in Appendix 1 referred to in paragraph 3.6 of this report are matters which could have been dealt with as a delegated officer decision, it is considered more expedient to deal with these matters within this report at the same time as dealing with the substantive issue of the review of the “minded to” procedure.

5.2 Financial

- 5.2.1 Any decision to reduce or increase resources must be made within the context of the Council’s stated priorities, as set out in its Council Plan 2015-19 as agreed at Council on 16 April 2015.
- 5.2.2 There are no proposals in this report that would reduce or increase resources.

5.3 Equality and Diversity

- 5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.
- 5.3.2 There are no implications arising out of the proposals within this report.

5.4 Environmental

- 5.4.1 The Council has to have due regard to conserving bio-diversity under the Natural Environment and Rural Communities Act 2006.
- 5.4.2 There are no implications arising out of the proposals within this report.

5.5 Crime and Disorder

- 5.5.1 Under the Crime and Disorder Act 1998 the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.
- 5.5.2 There are no implications arising out of the proposals within this report.

5.6 Children

- 5.6.1 Under the Children Act 2004 the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.
- 5.6.2 There are no implications arising out of the proposals within this report.

5.7 Risk Management

- 5.7.1 Any complaint about the planning process which is made should be thoroughly and properly investigated and appropriate action taken in the interests of the provision of good quality services to the public. A reasoned approach to the issues raised within this report should enable the Council to make improvements which are due and thereby minimise complaints.
- 5.7.2 The proposals within this report are designed to enable the public to have a better understanding of Planning Committee proceedings. If the proposals within this report are ultimately approved by Council, training and the availability at any time for Members to adjourn consideration for either a short period or to a subsequent meeting should enable the revised Code to work well in practice.

6 Reasons for decision/recommendation

- 6.1 To enable changes to the Council's Code of Planning Conduct and Practice principally in relation to the operation of the 'minded to' decisions to be considered.

M Neal
Deputy Chief Executive

Governance Checks:

Checked by or on behalf of the Chief Finance Officer	✓
Checked by or on behalf of the Monitoring Officer	✓

Background Papers:

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Appendix 1 Amended Code of Planning Conduct and Practice
Appendix 2 Excerpt from the Minutes of the Planning Committee Meeting of 13 November 2014