

Review of Planning Protocol Guidance

Summary of report:

The report is to provide information to Elected Members on recent planning case law and the government's indication of its intention to make changes to planning law, both of which necessitates the need for the Council to review its Planning Protocol Guidance.

Background papers:

None

Recommendation:

To note the content of the report.

1.0 Background

- 1.1 In accordance with best practice the Council has as part of its constitution the Planning Guidance Protocol (PPG) which was approved in June 2014 by full Council. The PPG provides advice and guidance to elected members and officers involved in the planning process.
- 1.2 Since the PPG was last updated there's been a number of significant changes that necessitate a review of it, a brief summary of which is set out below.
- 1.3 The law requires that decision-making on planning applications is a plan led system of development control as per the Town & Country Planning act 1990. Further. Under the Planning and Compulsory Purchase Act 2004 the government issued planning guidance and policy, previously these were known as Planning Policy Guidance Notes. Over time these have been replaced by a new planning policy system called the National Planning Policy Framework (NPPF).
- 1.4 The NPPF sets out the Government's planning policies for England and how these should be applied. It provides a framework within which locally-prepared plans for housing and other development can be produced. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and it is a material consideration in planning decisions.

- 1.5 The government has recently made a number of changes to the NPPF, which necessitates a review of the Councils PPG. In addition, part of the NPPF reflected the U.K.'s membership of the European Union, at the time, by implementing European law into UK law, some of which is applicable in the planning decision-making process such as the Habitats Directive as reflected in the Habitats Regulations 2017. At the time of leaving the European Union transitional legislative provisions carried over European Law to enable the government to have time to review the legislation. The government has announced as part of the Levelling up and Regeneration Bill that elements of European Law that are applicable to the planning process are to be reviewed and replaced, the details of which have yet to be announced but are expected soon.
- 1.6 In November 2022 the High Court handed down a significant decision relating to planning decisions and bias/predetermination. A charity, the Campaign to Protect Rural England (CPRE) brought judicial review proceedings challenging a District Council's decision to grant planning permission for some buildings to store carnival floats. CPRE argued that the decision was unlawful because two of the councillors who had voted in favour of the scheme when it was before the Council's planning committee were involved with other organisations which supported the scheme, meaning they were either biased or should be held to have predetermined the application. The court held that, a fair-minded observer would consider that there was a real possibility of bias. Accordingly, the court quashed the planning decision. This further necessitates a review of the Councils Planning Guidance Protocol.
- 1.7 In terms of timelines, whilst it is proposed that the review be commenced now, to enable the review to respond swiftly to any changes, to some extent it has to be acknowledged that the timescales will be influenced by the reshaping of government policy around European law and its implications for English planning law. As set out above to date the government has not set out the details of the proposed changes but they are anticipated to be publicised, in draft, soon.

2.0 Resource and legal considerations:

- 2.1 None directly related to this report. The review will be managed within Legal and Democratic Services from existing resources.

3.0 Performance and Risk Management issues:

- 3.1 Performance and risk management are a feature of all Council functions. It is important that Council policies and procedures are reviewed and updated on a regular basis. If the Council fails to do this there is an increased risk that the Council will be subject to legal challenge or litigation.

4.0 Equality Implications:

- 4.1 In maintaining up to date policies and procedures the Council will ensure that services are delivered fairly in an open and transparent manner and complying with its equality duties. It is important that planning matters are dealt with in compliance with these principles, the PPG assists Elected Members and officers to do so.

5.0 Consultation:

- 5.1 There is no requirement to directly consult on this report.

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