

Joint Standards Committee

30 September 2020

Report of the Monitoring Officer

Planning and Pre-Determination: advice for Council Members and the role of Joint Standards Committee in disseminating this

Summary

This report considers planning, in particular, pre-determination in planning matters and identifies potential ethical standards issues which the Joint Standards Committee may wish to discuss, particular ways in which to disseminate this advice across City of York and Parish Councillors.

Background

Substantial guidance is available both locally and nationally for Councillors involved in determining planning applications and ethical considerations in making such determinations. In addition, City of York Council have implemented a Code of Good Practice for Councillors involved in the Planning Process which can be found at Annex A. Section 4 of this Code deals with pre-determination.

The law on bias and pre-determination, which is a particular form of bias, is part of the general legal obligation on public authorities to act fairly. Decision makers are entitled to be pre-disposed to particular views, however, pre-determination occurs where someone closes their mind to any other possibility beyond that pre-disposition, with the effect that they are unable to apply their judgment fully and properly to an issue requiring a decision.

Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision, just because:

- (a) The decision maker had previously done anything that directly or indirectly indicated what view the decision maker took or would or might take in relation to a matter, and
- (b) The matter was relevant to the decision.

Councillors must not have a closed mind when they make a decision, as decisions taken by those with pre-determined views are open to legal challenge. At the point of making the decision, Councillors must consider all of the evidence put before them carefully and be prepared to modify or change their initial view in light of evidence presented or arguments put forward. They must then make their final decision at the meeting with an open mind based on all of the evidence before them.

A Member who has completely closed their mind should not participate in decision making.

The Code of Conduct for City Councillors is based on the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership and also contains specific duties which are placed upon Councillors, including a prohibition on compromising the impartiality of anyone who works for the Council and not conducting themselves in a manner which could bring the Council into disrepute, as well as provisions around not using a position of Councillor to obtain an advantage or disadvantage on others.

Implications

Financial

Not applicable to this report.

Human Resources (HR)

Not applicable to this report.

Equalities

None applicable to this report.

Legal

The Council's Constitution contains the Code of Good Practice for all Councillors to consider when dealing with planning matters and the rules around bias and pre-determination are a statutory requirement.

Crime and Disorder, Information Technology and Property

Not applicable to this report.

Recommendations

Members are recommended to note the report and any further issues arising from debate and determine whether the Committee should take further steps, in order to disseminate this advice further.

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**Report
Approved**

Date 21
September
2020

Specialist Implications Officer(s):

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

- **Annex A – Code of Good Practice for Councillors involved in the Planning Process.**