

Standards Committee

14 September 2023



Reading
Borough Council
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Title	Handling Arrangements for Council Developments
Purpose of the report	To make a recommendation to Council
Report status	Public report
Report author	Dave Anthony, Planning & Highways Legal Team
Lead Councillor	Cllr Jason Brock, Leader of the Council
Corporate priority	Our Foundations
Recommendations	<p>To:</p> <ol style="list-style-type: none">1. Agree the Handling Arrangements for Council Developments Policy2. Note the arrangements put in place for the Minster Quarter Development <p>To recommend to Council that:</p> <ol style="list-style-type: none">3. the Scope of the Standards Committee’s powers be increased to explicitly include Handling Arrangements for Council Developments Policy; and4. the decision of the Standards Committee as regards adoption of the Handling Arrangements for Council Developments Policy be endorsed.

1. Executive Summary

- 1.1. The Council can act as local planning authority in respect of planning applications for development of its own land (“Council Developments”) and can grant planning permission to itself.
- 1.2. Council developments that are likely to have significant environmental effects are subject to enhanced scrutiny known as environmental impact assessment. For these applications, regulations require the Council to put in place appropriate administrative arrangements (“Handling Arrangements”) to ensure separation of functions and an “information barrier” between teams of officers acting for the Council as applicant and the Council as local planning authority.
- 1.3. The Handling Arrangements must be published on the Council’s website and must set out the officers in each team, appropriate communications between those teams, and how access to the Council’s document storage systems will be restricted to maintain an information barrier between those teams.
- 1.4. It is proposed to also put Handling Arrangements in place for Council developments which do not require environmental impact assessments, in order to improve the transparency of Council decision-making.
- 1.5. The policy is attached at Appendix 1. It is proposed that the Committee adopt this policy and recommend that Council endorse Committee’s adoption of the policy.
- 1.6. While Handling Arrangements are considered to fall within the scope of the Committee’s powers under the Council’s Constitution, it is also proposed to recommend to Council

that the Committee's powers be explicitly expanded to include Handling Arrangements Policy.

- 1.7. The redevelopment of Minster Quarter is one such Council Development and its proposed Handling Arrangements are attached to this report as Appendix 2. This provides an illustration of how the Handling Arrangements work in a current scheme.

2. Policy Context

- 2.1. The Council currently has informal arrangements in place to separate its functions as developer and local planning authority. As set out in the Legal Implications section below, formal Handling Arrangements are now required and must be made publicly available in order to comply with regulatory requirements.

3. The Proposal

- 3.1. In accordance with Article 9.3.1 of the Council's Constitution, the remit of the Standards Committee currently includes:

6. To monitor the probity and propriety of all aspects of Council business ...

8. To make recommendations to the Council on any matters or issues relating to probity, propriety and general conduct where the Panel considers it appropriate to do so in the interests of maintaining the highest standards in the carrying out of the Council's functions.

- 3.2. Although it is likely that these points would cover Handling Arrangements, the first part of the proposal is to recommend to Council that the Committee's scope be explicitly expanded to include the Council's Handling Arrangements Policy. This is achieved by adding "Handling Arrangements for Council Developments Policy" to the list of policies within the remit of the Committee at paragraph 9.1.2 of Article 9. This currently reads:

9.1.2 The purpose of the Standards Committee is to oversee and develop the Council's ethical framework which includes, but is not limited to, the following policies:

Councillor Code of Conduct
Overall standards of conduct and ethics of Members and co-opted Members of the Council
Arrangements for Dealing with Allegations of Misconduct (the "Arrangements Document")
Staff Code of Conduct
Planning Code of Conduct
Member Officer Protocol
Policies in relation to Gifts and Hospitality

- 3.3. The second part of the proposal is to adopt a policy requiring Handling Arrangements for current and future Council Developments, so as to satisfy the legal requirements (as set out in "Legal Implications" below). The proposed policy is attached as Appendix 1.
- 3.4. While strictly the requirement for Handling Arrangements only applies to Council Developments which are likely to have significant environmental effects, the proposal is to routinely put such arrangements in place for all Council Development. This is because most Council Developments will be substantial, and the environmental impacts of development do not always become apparent until later in the assessment process. Putting Handling Arrangements in place for all Council Developments will also improve the transparency to the Council's decision-making and help to remove any suggestion of bias.
- 3.5. Council would then be asked to endorse the decision of the Standards Committee to adopt the Handling Arrangements Policy.

4. Contribution to Strategic Aims

- 4.1. Putting Handling Arrangements in place will allow the Council to comply with regulatory requirements relating to Council Developments. This will reduce the risk of challenge to planning permission decisions relating to council developments, avoiding risks of costly legal challenges and consequent delays to implementing Council Developments.

5. Environmental and Climate Implications

- 5.1. There are no environmental or climate implications arising from the decision, which only concerns the Council's internal operational procedures.

6. Community Engagement

- 6.1. No Community Engagement has been carried out as this relates to Council operational procedures to comply with a regulatory requirement. The affected teams within the Council have been involved in the preparation of the Handling Arrangements policy.

7. Equality Implications

- 7.1. Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its functions, have due regard to the need to—
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 7.2. There are no Equality implications stemming from the matters covered by this report.

8. Other Relevant Considerations

- 8.1. There are none.

9. Legal Implications

- 9.1. Regulation 64(1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the "EIA Regulations") sets out a general requirement that a Council (in its role as Local Planning Authority) must perform its duties under the EIA Regulations in an objective manner and so as not to find itself in a situation giving rise to a conflict of interest.
- 9.2. Regulation 64(2) of the EIA Regulations requires that where an authority is bringing forward a proposal for development and that authority will also be responsible for determining its own proposal, the authority must make appropriate administrative arrangements to ensure that there is a functional separation between the persons bringing forward a proposal for development and the person responsible for determining the proposal.
- 9.3. The Council already had informal arrangements in place, in that officers involved in deciding planning applications would have no part in promoting Council Developments and different lawyers would advise the Council as developer and as local planning authority.
- 9.4. However, the High Court judgment of *London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government* [2020] EWCA 2580 (Admin) (also known as the *Holocaust Memorial* decision) has made it necessary for local authorities to review how Regulation 64(2) is implemented and to put more formal measures in place.
- 9.5. The Court found that, in order to comply with the EIA Regulations, the Handling Arrangements should:
- 9.5.1. be made public;
- 9.5.2. specifically refer to Regulation 64(2) and make it clear that they set out a regime that is necessary to comply with the Council's legal obligations, not just guidance;

- 9.5.3. identify the teams within the Council which will carry out the functions of promoting and deciding the development;
 - 9.5.4. prohibit those in the team deciding the application from being involved in promoting or assisting in the promotion of the application;
 - 9.5.5. prohibit communications between the two teams other than through the formal channels appropriate to the application process; and
 - 9.5.6. set out the measures put in place to implement an information barrier between the two teams, such as restricting access to files in the Council's legal and planning document management systems.
- 9.6. There are two Council IT systems where an information barrier will need to be in place. Firstly, the lawyers advising each team will keep their advice in the IKEN system and will need to ensure that lawyers for each team cannot see the advice given to the other team. Secondly, planning officers store work in the NEC EDMS system. The system can be configured so as to restrict access to the appropriate planners. The Council lawyers can also get access to NEC EDMS and arrangements can also be put in place to restrict the access to the relevant materials only.
- 9.7. Not having appropriate Handling Arrangements in place for Council Developments would put the Council in breach of its regulatory requirements, which could increase a risk of objectors taking judicial review against any planning permissions granted for Council Development. Such challenges would be based on the failure to follow regulatory requirements and on the appearance of biased decision-making caused by the lack of transparency in the Council's internal procedures.

10. Financial Implications

- 10.1. There are no financial implications, as the change of policy represents a change of internal procedures and so will be covered by existing officer time.

11. Timetable for Implementation

- 11.1. Handling Arrangements for the Minster Quarter Redevelopment have already been put in place and are attached at Appendix 2.
- 11.2. Similar Handling Arrangements will need to be put in place for future Council development projects, where the Council is both applicant and decision maker. The detailed arrangements will need to be in place before applications are made.

12. Background Papers

- 12.1. There are none.

Appendices

1. Handling Arrangements for Council Developments Policy
2. Example Handling Arrangements for the Minster Quarter Redevelopment