



Brent

Standards Committee

Thursday 27 March 2014 at 7.00 pm

Boardroom - Brent Civic Centre, Engineers Way,
Wembley, HA9 0FJ

Membership:

Members

Independents:

Sheila Darr

Councillors:

Ketan Sheth (Chair)

Cummins

Gladbaum

Harrison

HB Patel

first alternates

second alternates

For further information contact: Bryony Gibbs, Democratic Services Officer
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The press and public are welcome to attend this meeting

Agenda

Introductions, if appropriate.

Apologies for absence and clarification of alternate members

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Members are invited to declare at this stage of the meeting, any relevant financial or other interest in the items on this agenda.	
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Report on the Reviews of the Licensing and Planning Codes of Practice and on the Members' Code of Conduct	

The Licensing and Planning Codes of Practice form part of the Council's Constitution and set out the processes and Member conduct in relation to these regulatory functions. These Codes are periodically reviewed by an independent person. The Members' Code of Conduct is also part of the Constitution and overlaps in parts with the Licensing and Planning Codes of Practice. This report sets out the reviews undertaken, the findings, and the recommendations for changes.

5 Date of Next Meeting

The date of the next meeting will be confirmed at the Annual council meeting scheduled for 4 June 2014.

6 Any other urgent business

Notice of items to be raised under this heading must be given in writing to the Democratic Services Manager or his representative before the meeting in accordance with Standing Order 64.



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LONDON BOROUGH OF BRENT

MINUTES OF THE STANDARDS COMMITTEE Thursday 9 January 2014 at 7.00 pm

PRESENT: Ketan Sheth (Chair) and Councillors Cummins, Gladbaum, Harrison and HB Patel together with Sheila Darr (Co-Opted Member)

Also present: Councillor Cheese and also Sola Afuape (Independent Member)

1. **Declarations of personal and prejudicial interests**

None made.

2. **Minutes of the previous meeting**

RESOLVED:

that the minutes of the previous meeting held on 17 October 2013 be approved as an accurate record of the meeting.

3. **Matters arising**

None.

4. **Independent Investigator's report following an allegation of a breach of the Code of Conduct**

The report from the Monitoring Officer presented the Standards Committee with the Independent Investigator's report in relation to allegations that Councillor Paul Lorber breached the Code of Conduct. The independent report was commissioned by the Monitoring Officer in accordance with the decision of this Committee on 17 October 2013 that an investigation should take place.

Fiona Ledden (Monitoring Officer) advised that the report from the Independent Investigator came to the conclusion that Councillor Lorber had not breached the Code of Conduct in the email exchanges with Mr Smith of ACAVA during 8 and 22 September 2013 over the use of Barham Park Buildings, Sudbury. It was now for members to consider the report, to decide whether or not to accept the findings and, whether or not there were any lessons the authority could learn.

Alex Oram (ch&I associates ltd), the Independent Investigator, was present at the meeting, summarised the material of facts of the case and outlined the reasoning as to whether there had been failure to comply with the Members' Code of Conduct as set out in his report. On balance, Mr Oram found that Councillor Lorber had not

disclosed any confidential information and while his tone and choice of language may be cause for concern, it did not amount to disrespect. It was felt that Councillor Lorber was acting as a community representative and had not sought to use his position improperly to confer advantage.

Members in discussion questioned the threshold to be applied in deciding the appropriateness of language. Mr Oram commented that he had taken into account the forum in which the discussion had taken place (ie within the council) and that it had not been directed to an individual but an organisation. Members agreed with the suggestion that given the responsibility elected representatives had to advocate on behalf of the community, consideration should be given to addressing self-awareness and accountability. Additionally, it was agreed that members should be provided with additional guidance on balancing outside interests, the potential for conflict of interest including the need to sign-off correspondence appropriately so as to be clear in what capacity correspondence was being written. Furthermore, it was agreed that members should be reminded of the need to be aware of the importance of tone and to be conscious of the recipient when communicating by email.

The committee agreed to accept the findings of the Independent Investigator and the recommendations in the Monitoring Officer's report and thanked Alex Oram for his report which they considered to be well written and accessible. Members also thanked Fiona Ledden for her contribution.

The Monitoring Officer then invited specific comments on how the council could take forward any lessons learned. On the Member Development Programme, it was felt that mechanisms should be in place to ensure members attended recommended training sessions. Also, that training provided should be more interactive to encourage councillors to attend and to bring about behavioural change both for experienced and recently elected members.

Alex Oram welcomed the inclusion of member training into the discussion and reiterated guidance on making the distinction between acting in private and in official capacities. He drew attention to the changes in disclosure of interests under the Code of Conduct required by the Localism Act 2011 which underlined the need for additional guidance and training. Members also agreed on the value of engaging and communicating with the public to increase awareness of expectations.

RESOLVED:

that having reviewed the report by Alex Oram, Independent Investigator, attached as Appendix 1 to the report from the Monitoring Officer, and taking into account the views of the Independent Person as set out at paragraph 3.6 to 3.8 of the report from the Monitoring Officer, that the conclusions of the Investigator's report that during the exchanges with Mr Smith at ACAVA between 8 and 22 September 2013 Councillor Lorber did not breach the Members' Code of Conduct, be accepted.

5. Annual report from the Monitoring Officer

The Monitoring Officer's Annual Report to the Standards Committee for the period December 2012 to December 2013 provided an update on member conduct issues and the work of the Standards Committee and the Monitoring Officer during that

period. The report also reviewed the introduction of the new Standards regime which was introduced in July 2012.

The Monitoring Officer, Fiona Ledden, drew attention to the allegations and referrals received during the year where she had exercised her discretion on how they should be dealt with and had not made referrals for investigation. Regarding Gifts and Hospitality, Fiona Ledden referred to discussions that were taking place at senior officer level regarding the best way of declaring tickets given to the council by Wembley Stadium Ltd for staff and members. It was felt that as these were distributed by ballot and not donated to individuals, consideration could be given to the council making a general declaration to cover all tickets.

In discussion, members sought clarification on how allegations and referrals of misconduct were resolved. The Monitoring Officer advised that she may talk to the individual concerned or raise issues with Group Whips. Again, the importance of training in softer skills was stressed in helping members to be more aware of public perception particularly in meetings such as Planning and Licensing Committees in addition to regular training to enhance the knowledge base.

On the question of declaring Wembley Stadium event tickets, the committee discussed the extent to which members could be seen to have benefitted even where they did not personally attend an event but passed the ticket on to third party. Also discussed was the need to declare tickets given the number involved, which was considered onerous by some, weighed against the value of the council being seen to be open and transparent in its dealings with Wembley Stadium.

RESOLVED:

that the report be noted.

6. Review of the Member Development Programme and Members' Expenses

The purpose of the report from the Director of Legal and Procurement was to review the Member Development Programme and members' travel expenses. The report outlined the development sessions delivered for members since May 2012 and also outlined the upcoming induction programme for June 2014.

Fiona Ledden (Director of Legal and Procurement) referred to the draft member induction programme to be rolled out following the Local Elections in May 2014 which was being reviewed. She was pleased to report that the Member Development Programme had recently been reaccredited with the Charter for Elected Member Development for the next three years. Consideration was being given to mandatory training, ways of enhancing training to increase engagement and raising the profile of the Member Development Steering Group. Improvements were being sought through identifying best practice both in and outside London, improving training evaluation and introducing mentoring.

In considering the Director's report the Chair suggested that Group Whips attend committee meetings to inform suggestions of training needs.

RESOLVED:

that the report be noted.

7. **Date of Next Meeting**

It was noted that the date of the next meeting could be delayed so as to allow submission of the report on the Licensing Code.

8. **Any other urgent business**

None.

The meeting closed at 8.30 pm

KETAN SHETH
Chair



Standards Committee
27 March 2014

**Report from the Director of Legal and
Procurement**

Wards Affected:
ALL

**Report on the Reviews of the Licensing and Planning Codes
of Practice and on the Members' Code of Conduct**

1.0 Summary

1.1 The Licensing and Planning Codes of Practice form part of the Council's Constitution and set out the processes and Member conduct in relation to these regulatory functions. These Codes are periodically reviewed by an independent person. The Members' Code of Conduct is also part of the Constitution and overlaps in parts with the Licensing and Planning Codes of Practice. This report sets out the reviews undertaken, the findings, and the recommendations for changes.

2.0 Recommendations

That the Committee:

- 2.1 Note the report following the independent review of the Licensing Code of Practice attached as Appendix 1
- 2.2 Consider the recommended changes to the Licensing Code of Practice shown as track changes in Appendix 2
- 2.3 Note the report following the independent review of the Planning Code of Practice attached as Appendix 3
- 2.4 Consider the recommended changes to the Planning Code of Practice shown as track changes in Appendix 4
- 2.5 Note the observations made in relation to the Members' Code of Conduct arising from the review of the Licensing and Planning Codes of Practice and consider the recommended changes to the Members' Code of Conduct attached as Appendix 5

- 2.6 Agree that the period for review of the Licensing and Planning Code of Practice be every 3 years.

3.0 Detail

- 3.1 The Licensing and Planning Codes of Practice are reviewed periodically to ensure that they comply with any legal requirements, are fit for purpose and that they are being properly applied by members and officers. It was also necessary on this occasion to consider the content of these Codes in light of the changes made to the Member Code of Conduct following the Localism Act 2011.
- 3.2 The council appointed Belinda Shaw of Ch&i Associates to undertake these reviews. Belinda Shaw has considerable experience and expertise in Standards and Member Code of Conduct matters following her role with Standards for England. Ms Shaw was Investigations Manager and Principal Investigator at Standards for England. She has substantial experience dealing with complex and high profile code of conduct investigations and advises and guides monitoring officers on code issues and provides training to local investigators and standards committee members.
- 3.3 The reviews involved interviews with Members and officers, a sample review of the agendas, papers and minutes of the Licensing and Planning Committee meetings and a consideration of various background papers. Although the general Members' Code of Conduct was not under formal review, the review of the other Codes has highlighted some areas in the main Code which would benefit from change. Furthermore, this is an opportune moment to reflect upon and review the Members' Code of Conduct since it is some two years on from the changes to the standards regime introduced by the Localism Act 2011.
- 3.4 Members of this committee are asked to consider and comment on the recommendations and the draft amendments to the Codes. The final approval of any changes to the Codes will be a matter for Full Council since these form part of the Constitution.

Licensing Code

- 3.5 There is no formal frequency for review of the Licensing Code and it has been some time since a review has been completed. The report on the Licensing Code by Ms. Shaw, who undertook the review, is attached at Appendix 1. Attached as Appendix 2 are the suggested changes to the Licensing Code following the review. They are shown as track changes.
- 3.6 The Committee will note that the comments about the Council's conduct of Licensing Committee and member and officer application of the Code are positive and that the focus of the recommended changes is predominantly in relation to updating the Code in light of recent legislative changes.
- 3.7 The recommended areas for change are summarised in paragraph 2.2 of Ms. Shaw's report. One of the main reasons for commissioning this review was to update the Licensing Code in line with the requirements set out in the

Localism Act 2011 regarding Disposable Pecuniary Interests and bias and predetermination, and Members will note that a number of changes recommended relate to these matters.

- 3.8 Members will note that it is recommended consideration be given to retaining personal and prejudicial interest declarations in the Licensing Code (and indeed the Planning Code – see below) and that this be re inserted into the Members’ Code of Conduct. The Members’ Code of Conduct was revised in 2012 following changes to the Standards regime introduced by the Localism Act 2011. Councils were no longer required to adopt a prescribed Model Code and the position regarding disclosure of members’ interests, save for specific requirements regarding Disclosable Pecuniary Interests, was largely left at the discretion of individual Councils. This Council, along with many others, did not replicate the previous personal interest register and requirements, although the law on bias was still applied and members continued to be prompted at each meeting of the need to declare any interest which may affect their ability to participate.
- 3.9 Since the introduction of the Localism Act 2011 the Government has issued guidance on Standards matters which encourages transparency beyond that specifically required by law, and having reviewed the position it is recommended that the Members’ Code of Conduct be amended to include declaration of personal and prejudicial interests in addition to Disclosable Pecuniary Interests. The rationale and detailed explanation for this recommendation is set out in Appendix 5. The resulting proposed changes and a simplification of the explanation of Disclosable Pecuniary Interests are set out in a revised Members’ Code of Conduct at Appendix 5. In short therefore, rather than bringing the Licensing and Planning Codes into line with the Members’ Code of Conduct, it is recommended that the main Code be amended to provide for disclosure of personal interests.
- 3.10 The review of the Licensing Code also provides some helpful suggestions in relation to process, including a reminder about the importance of members recording approaches, and a recommendation that the Monitoring Officer should maintain this register so as to be consistent with the arrangements under the Planning Code. In order to ensure that members are aware of this requirement a reminder will be sent by way of a Monitoring Officer Advice Note and the need to comply with this aspect of the Code will be addressed in the members’ induction training and training for members of the Licensing Committee post May 2014.
- 3.11 It is suggested that members be provided with a clear mechanism by which they can refer approaches or enquiries made in relation to licensing matters and that the Licensing Code should reflect the current practice regarding officer attendance and advice in closed session where the referral was made by the Council as Licensing Authority. There are also minor changes recommended in relation to site visits.
- 3.12 The independent review also addresses the question of training for members and the extent to which, if at all, it should be compulsory for members of the Licensing Committee and or a condition of membership. The same comments are made by Ms. Shaw in relation to training for Planning Committee members. It is recognised by officers that it is very important that members of

these committees should be provided with and should attend training sessions so that they may be fully aware of the current legal position, the requirements of the Code etc. Training is provided at regular intervals and will form an important part of the induction process in June 2014 following the local elections. There are practical and legal constraints upon enforcing requirements to attend training, and members may wish to consider how the importance of training is to be expressed in the Code.

Planning Code

- 3.13 The Planning Code provides that a review should take place every 2 years and the completion of a review was overdue. The review was conducted by Ms Shaw whose expertise and experience in these matters is as set out above. The review model is the same as that outlined above in relation to the Licensing Code and is further expanded upon in Ms Shaw's report. Ms Shaw's report on the review of the Planning Code of Practice is attached as Appendix 3 and the proposals for changes to the Code are attached as Appendix 4.
- 3.14 As with the Licensing Code the independent review did not uncover any significant problems with member and officer compliance and implementation of the Planning Code. The focus of the review and of the proposed changes concentrate on updating the Planning Code to reflect the legal changes made by the Localism Act 2011 and to take into account guidance issued regarding good practice. The proposed changes regarding personal interests, the inclusion of Disclosable Pecuniary Interests and an update regarding bias and predetermination in the Planning Code are along similar lines to those recommended in relation to the Licensing Code. Site visits and member training are also repeated themes in the Planning Code review. As with approaches in Licensing cases, members will also be reminded by way of a Monitoring Officer Advice Note of the process to be followed. The rationale for those recommendations is already set out above and applies equally in the Planning Code context. This part of the report to committee therefore concentrates on matters particular to the Planning Code.
- 3.15 The aspect specific to planning identified as benefitting from inclusion in the Code is the position where the Council is the applicant or landowner and suggested amendments to member involvement in such decisions is included in paragraph 23 of the Planning Code attached as Appendix 4.

Members' Code of Conduct

- 3.16 There was no separate plan to review the Members' Code of Conduct; this arose as a consequence of the review of the Licensing and Planning Codes. Attached as Appendix 5 is the note by Ms Shaw which outlines and explains why inclusion of personal and prejudicial interest is recommended. Also included at Appendix 5 is a suggested revised Code. Track changes are not shown since it was too difficult to follow in that format. Members are advised to consider and comment on the recommended changes.

Future reviews of the Planning and Licensing Codes of Practice

3.17 Having regard to the current reviews it is reasonable to conclude that the Codes are applied and followed by officers and members and no significant issues have arisen which give cause for serious concern. The Codes do however require updating from time to time to ensure they are in line with current requirements and other Council practices and procedures. To that end it is proposed that the Planning and Licensing Codes be reviewed every 3 years.

4.0 Financial Implications

4.1 This report contains no specific financial implications.

5.0 Legal Implications

5.1 The legal requirements relating to members' Code of Conduct and the Standards regime are set out in the Localism Act 2011.

6.0 Diversity Implications

6.1 This report contains no specific diversity implications.

7.0 Staffing Implications

7.1 This report contains no specific staffing implications.

Background papers

*Brent Members' Code of Conduct, the Licensing Code and the Planning Code
Localism Act 2011*

Should any person require any further information about the issues addressed in this report, please contact Kathy Robinson, Senior Corporate Solicitor, on telephone number 020 8937 1368.

**Fiona Ledden
Director of Legal and Procurement**

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REVIEW OF BRENT COUNCIL LICENSING CODE OF PRACTICE

1. Introduction

I am an independent consultant working with local authorities on a range of Standards matters. In December 2013 I was commissioned to review the council's Licensing Code of Practice, and to address the following areas:

- 1.1 Is the Licensing code legally accurate, robust and fit for purpose?
- 1.2 Is the Licensing code effective in practice? Are any changes needed regarding the implementation of or monitoring of the application of the Code, to ensure good practice?
- 1.3 Do members understand the Code and apply it appropriately? Is additional training or other assistance required?
- 1.4 Are there any other issues regarding the Code's application and usefulness?
- 1.5 Are there aspects of the main Member code of conduct, in particular with regard to member interests, that could usefully be amended?

2. Summary of Recommendations

2.1 My review did not identify any significant problems with member or officer implementation of the current Licensing code. The Licencing committee processes that are in place are robust and my assessment is that they are being implemented and applied effectively, by members and officers. Licensing members have a good understanding of the principles of the Licensing code. Members receive and are appreciative of strong officer support in carrying out their role. However, the Licensing code itself has, with the passage of time, fallen out of step with legislation, up to date guidance and with the council's Member code. It would also be helpful to amend or expand advice to members already in the Licensing code. In this context I have focussed my recommendations on the necessary changes to the Code to ensure that it is legally accurate robust and fit for purpose.

2.2 The Licensing code should be amended as follows:

- a) To include guidance on predetermination and bias, taking account of section 25 of the Localism Act 2011 regarding pre-determination.
- b) To include the statutory obligations on members regarding Disclosable Pecuniary Interests (DPIs)
- c) To include guidance on the Human Rights that Licensing members should consider when making decisions on licensing matters.
- d) To set out the risks of a member failing to follow the Licensing code, and to give guidance on the principles of natural justice and human rights
- e) To give additional guidance to members of the council who are not on the Licensing committee on how to deal with approaches from licensees or other interested parties.

- f) To clarify the circumstances in which the council's Licensing Officer will not retire with Licensing members when they go into closed session to make their decision on a matter.
 - g) to clarify how members should conduct themselves at any informal viewing of an application site.
 - h) To address member obligations with regard to attendance at relevant training
 - i) to incorporate the changes to guidance on the Licencing committee procedures that have been recommended by the council's legal officers
- 2.3 Licensing Members should be reminded that they are required to notify in writing the Monitoring Officer of any approach made to them by an applicant, agent or any interested party in a Licensing matter, in addition to keeping their own written note of the approach and disclosing the fact and nature of the approach at the relevant Licencing committee meeting.

3. Background

- 3.1 Members of the council are obliged to follow the Licensing Code as part of the Brent Member's Code of Conduct. The main objectives of the Licensing code are to guide members and officers dealing with licensing matters and to set out the standards adopted by the Council in the exercise of its Licensing function.
- 3.2 There is currently no cycle of review of the Licensing Code. In 2012 legal officers identified and drafted proposed changes to the Licencing Code, with a view to bringing it into line with the newly adopted 2012 Member Code. I have considered and adopted those proposed changes as part of this review.

4. Review Process

- 4.1 I was asked to review the content of the Licencing code and its' application from January 2013 to February 2014. I have interviewed relevant members and officers. I have reviewed the decisions recorded in minutes of the Licencing sub-committees for the thirteen months from January 2013. The Alcohol and Licensing sub-committees A B and C were regularly convened during this period. The General Purpose Licencing sub-committee was not convened. I have also considered information from the council's elected member development programme and of additional training provided by legal and licensing officers regarding Licencing matters.
- 4.2 I have taken account of relevant legislative changes in the Localism Act 2011, central government guidance on member conduct and relevant guidance from the Local Government Association.

5. Findings

- 5.1 The Licensing code does not reflect new legislation and guidance on bias and predetermination. Section 25 of the Localism Act 2011 provides that where a member has expressed views on an issue that does not, of itself, show that the member has a closed mind or has predetermined the issue. However that section did

not abolish the concept of predetermination. In the context of the council's Licencing function, which is a quasi-judicial process, it remains essential that members are given guidance to reduce the risks of challenge to their decisions on the grounds of predetermination and bias. The Licensing code should include updated guidance on the meaning of predetermination and bias. My proposed wording is set out in paragraphs 1.1 to 1.3 of Appendix 1 to this report

- 5.2 The Licencing Code does not refer to member obligations regarding Disclosable Pecuniary Interests (DPI's). Those are legal obligations and a failure to comply with them can lead to criminal sanction. The council's Member code does set out what members are required to do if they have a DPI. The Licencing Code should be amended to include these member obligations regarding DPI's. My proposed wording is set out at 1.5 and 1.6 in Appendix 1 to this report.
- 5.3 The Licensing Code reflects the position on personal and prejudicial interests that existed prior to the adoption of the council's Member code in July 2012. In 2013 the government issued further guidance on openness and transparency with regard to member interests. The guidance suggested some further categories of interests that members should register and/or declare at meetings. In this context I am recommending that the Member code could reasonably be revised, to include provision for member registration of personal (non-pecuniary) interests and for the declaration of personal and prejudicial interests. My proposed wording for the revised Member code is set out in Appendix 2. I recommend that current references to personal and prejudicial interests in the Licensing code remain as they are.
- 5.4 The minutes of Licensing committees meetings for the 13 months from January 2013 show that Licensing decisions take proper account of the Human Rights of applicants, objectors and residents. Members are given appropriate legal advice on Human Rights at every committee meeting. The Licensing code does not currently refer members to the Human Rights that are most relevant. During this review Licensing members suggested that some detail on Human Rights could usefully be included in the Code to further assist members in their decision making. My proposed wording is at paragraph C and in an annexe to Appendix 1
- 5.5 The Code does not summarise in one place the risks that members may expose themselves and the council to if they do not comply with the code. At interview the Chairs of the Licensing sub-committees said that it would be useful to have those risks set out in the Code, so that members could be referred to them when necessary. My proposed wording on the risks of non-compliance is in the "Purpose of the Code" introduction in Appendix 1.

Approaches and contacts

- 5.6 At present the code requires Licencing members to notify in writing the Strategic Director Environment and Neighbourhoods of any approach they receive from an applicant objector agent or interested party. It appears that members have not routinely been doing this. The minutes for the period of review show that members are regularly making the appropriate declaration of the approaches that have been

made to them when they consider a matter at Licencing Committee. Members interviewed said they are keeping their own note of those approaches. Officers propose that the register of approaches should be kept in the future by the Monitoring Officer. I recommend that members be formally reminded of their obligation to notify the Monitoring Officer in writing of approaches, so that the council's register of approaches is properly maintained.

- 5.7 During this review officers said that elected members who are not Licensing Committee members would benefit from Code guidance on how to bring a constituent's representations, or their own representations, to the attention of the Licensing Committee. The officer view is that the correct approach is for the elected member to forward their own representations, or any representations made to them by the licensee, objectors or other interested parties, to the appropriate senior officer in the Licensing service, in order that those representations can be put forward as part of the report to committee members. My proposed wording on this issue is at 1.10 of Appendix 1

Officer advice to members when they retire to take their decision.

- 5.8 The Licensing code sets out the hearing procedure for the Alcohol and Entertainment Licensing sub-committees. The current procedure is for members to retire into closed session to make a decision, after hearing all the evidence. The members are accompanied into closed session by the legal officer, licensing officer and democratic services officer present at the meeting. The procedure states that during the closed session "the legal officer and licensing officer will only provide advice on legal issues related to the issue". In this procedure the "licensing officer" is the council's Senior Regulatory Services Manager, Mrs Yogini Patel. Mrs Patel oversees the work of the council's licensing inspector team. The licensing inspectors present individual cases at the committee hearings.
- 5.9 Legal officers question whether the licensing officer's presence as an advisor to the members in closed session might risk a challenge to the council decision, where the licensing officer is seen as having been too closely involved with the application process itself. The legal adviser to the Licensing committees noted that this procedure has been called into question once, by an applicant's legal representative.
- 5.10 I discussed this issue with the Licensing committee members and with Mrs Patel. The members said at interview that the Licensing Officer's advice is helpful to them particularly with regard to the wording and appropriateness of any licence conditions that members may be considering. The licensing officer keeps a "master list" of appropriate conditions for the council, derived from her experience in attending each of the three sub-committee meetings and also from the bulk of agreed applications that do not need to come to a Licensing committee. Members felt that the licensing officer was objective and neutral with regard to the decisions members needed to make.
- 5.11 Mrs Patel said that she felt able to give impartial and objective advice to the members in the majority of cases. Mrs Patel noted that she would not retire with

members to provide advice for those cases where the licensing officers themselves, acting for the Licensing Authority, were requesting the review of a licence or were making their own representations against the grant of a licence.

- 5.12 The advice of the licensing officer during the closed session deliberations of Licensing members is seen by members to be providing value. The question for the council is whether there is a meaningful risk that the decision of the Licensing committee could be successfully challenged because the licensing officer joined the members in closed session. To reduce any such risk I recommend that the Code wording be amended to make it clear in which circumstances the licensing officer will not accompany members into closed session to provide advice. My proposed wording is at paragraph 6.2 in Appendix 1.

Site visits

- 5.13 There were no site visits during the review period. Licensing members and officers interviewed did not consider that any of the applications considered at Committee had merited a formal site visit. Each of the Licensing committee Chairs said at interview that they had from time to time “walked by” or “driven by” a particular application site, to gain a better understanding of the location’s proximity to local homes or schools. I note that informal viewing is not inappropriate provided that such a viewing takes place from a public place and a Licensing member does not enter the relevant premises or interact with the applicant agent or other interested parties. For the avoidance of doubt I suggest an amendment to the Site Visit guidance to clarify this for members. My proposed wording is at paragraph 2.5 of Appendix 1

Training

- 5.14 Licensing members receive formal training as part of the council’s Elected Member Development programme, together with additional training provided by legal and licensing officers. All new licensing members receive initial training before taking part in Licensing Committee. When necessary the licensing officer has delivered a one-to-one training session to enable a new member to be inducted quickly. Member feedback on the training received shows that they value it highly. Members would like future training to focus on case-studies whenever possible and officers are already responding to this. Members also have access to detailed Monitoring Officer Advice notes on issues relevant to their work. These notes are published on the Intranet in a dedicated folder.
- 5.15 The Council acknowledges the importance of members carrying out quasi-judicial and regulatory work having all the necessary training, not just induction training . This is referred to in the Elected Member Development programme and was referenced by the external assessors who have just awarded the council a renewed London Charter status for elected member development. Not all members regularly attend the refresher training that is offered to them. This is not an issue restricted to Licensing members, as it is recognised across the council that it can be difficult to secure the attendance of members for training.

- 5.16 The Licensing Members I interviewed expressed the view that not only induction but also refresher training should have some mandatory element. The legal officer confirmed that given the quasi-judicial nature of the member role in the Licensing function, it was important that members attended training to reduce the risk of a legal challenge to the council. It may be unreasonable to make attendance at all training sessions mandatory. The council may however want to consider introducing a small number of mandatory training activities. If that option is chosen then my proposed wording is at paragraphs 8.1 to 8.3 of Appendix 1.

Belinda Shaw
Independent Consultant
Ch&i Associates

March 2014

BS REPORT - APPENDIX 1 PROPOSED CHANGES TO LICENSING CODE OF PRACTICE

Purpose of this Code

The Licensing Code of Practice has been adopted by Brent Council to regulate the performance of its licensing function. Its major objectives are to guide members and officers of the Council in dealing with licensing related matters and to inform potential licensees and the public generally of the standards adopted by the Council in the exercise of its licensing functions. The Alcohol and Entertainment Licensing Sub-Committees exercise functions under the Licensing Act 2003 (the sale by retail of alcohol, the supply of alcohol, the provision of regulated entertainment, and the provision of late night refreshment), and the General Purposes Licensing Sub-Committee exercises the Council's licensing functions under all other legislation. Except where otherwise stated, references in this Code are to both committees and the expression "Licensing Committee" should be interpreted accordingly. The Licensing Code of Practice is in addition to the Brent Members Code of Conduct adopted under the provisions of the Localism Act 2011. Members should follow the requirements of the Brent Members Code and apply this Code in light of the Members Code. Government Act 2000. The provisions of this code are designed to ensure that licensing decisions are taken on proper licensing grounds, in a fair consistent and open manner and that members making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members in dealing with and recording approaches from applicants, licensees and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

This Code also draws members' attention to the different status of the Licensing Committees from normal Council committees, by their quasi-judicial nature and the requirement to strictly follow the rules of natural justice.

If a member does not abide by this Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision; and the member may be at risk of either being named in a report to the Standards Committee or Council; or if the failure to abide by the Code is also likely to be a breach of the Member Code of Conduct, of a complaint being made to the Monitoring Officer.

If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

The Code

A.

On the Licensing Committees, Members are exercising quasi-judicial functions and as a consequence have a duty to follow the rRules of nNatural jJustice and act in accordance with the council's duty to act in a way that is compatible with Convention rights under the Human Rights Act 1998.

-accordingly the following provisions apply:

B. The rules of natural justice include; the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That

principle means that members must be and be seen to be impartial and without bias, and that members should not take part in any decision that affects their own interests.

C. The Human Rights that are particularly relevant to the Licensing process are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions. Further information about these rights is set out in Annexe 1 to this Code.

1. General provisions as to conduct

Bias and predetermination

- 1.1 No one should decide a case where they are not impartial or seen to be impartial. Licensing members should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to a fair and informed observer that there was real possibility of bias, or where a member has predetermined the matter by closing their mind to the merits of the decision before they come to take it.
- 1.2 Section 25 of the Localism Act 2011 provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- 1.3 Although the Localism Act recognises the reality of the role of members in matters of local interest and debate, it does not amount to the abolition of the concept of pre-determination. A member of the licensing committee must not make up their mind on how they will vote on any licensing matter prior to formal consideration of the matter at the meeting of the Licensing Committee and the member hearing the evidence and arguments on both sides. A member should not make comments on Licensing policy or procedures, or make any commitment in advance as to how they intend to vote on a matter, which might indicate that they have closed their mind. Any licensing decision made by a member who can be shown to have approached the decision with a closed mind will expose the council to the risk of legal challenge.

Accountability and Interests

- 1.42 If a member of the Council has a personal interest in any licensing application or other matter before the Licensing Committee, then the member shall, if present, declare a personal interest at that meeting unless the interest arises because the member is a member of or is in a position of general control or management in a body to which they were appointed or nominated to by the Council or that exercises functions of a public nature. In which case the member only needs to disclose the personal interest if they address the Licensing Committee meeting on that item.
- 1.5 If a member has a disclosable pecuniary interest in any application or other matter before the Licensing Committee, and the interest is not entered in the council's register, the member must disclose the interest to the meeting.

~~1.63~~ If a member has a disclosable pecuniary interest or personal interest in a matter and if that interest is also a prejudicial interest in a matter then the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that if the member has y made representations under the Licensing Act, and isare therefore entitled to speak at the meeting, the member may make representations, answer questions or give evidence in respect of the application or matter in question in so far as the public have the right to do so. A member must then withdraw from the room for the rest of that item and play no further part in the discussion.it.

~~1.4~~ ~~Additionally, Members should not determine a particular application when they are actually biased in favour or against the application or it might appear to a fair and informed observer that there was real possibility of bias.~~

1.75 Members of the Licensing Committees should not determine any application if the member, his/her relative, friend or associate is the applicant or agent for that matter or an objector.

1.86 Members who have business or other interests which may bring them into contact with the Council's licensing system on a regular basis should not be considered for membership of the Licensing Committees.

Approaches

1.97 If an approach is received by a member of a Licensing Committee from an applicant, objector, their agents or an interested party in relation to a particular licensing application or any matter which may give rise to a licence application, the member shall:

(a) inform such applicant or agent or interested party that such approach should only be made to officers or to elected members who are not members of the Licensing Committees;

(b) forthwith notify in writing to the Monitoring Officer Director of Health, Safety and Licensing the fact that such an approach has been made, identifying the application, the nature of the approach, by whom it was made, and the action taken by the Member concerned;

(c) keep an adequate written record so as to enable the Member to disclose the fact and nature of such an approach at any relevant meeting of the Licensing Committee.

~~1.10~~ If an elected member who is not a member of Licensing Committee is contacted by an applicant objector or interested party then that member should discuss the issues raised by their constituent with the appropriate licensing officer and may forward any representations or evidence to that officer, who will include the relevant information in the report to the Licensing committee. If an elected member

wishes to make their own representations about a matter they should likewise make those representations to the appropriate licensing officer.

1.11 4.8—Any elected member who is not a member of the General Purposes Licensing Sub-Committee but who is a member for the Ward in which the premises are located (or a member of an adjoining Ward which is affected by the application) shall be entitled to address a meeting of the General Purposes Licensing Sub-Committee on the subject of a particular licence application. However he/she shall disclose whether he/she has been in contact with the applicant, objectors their agents or an interested party and whether they have a personal or disclosable pecuniary interest or prejudicial interest in the license application. If a Ward member has a disclosable pecuniary interest or a prejudicial interest in a matter before the General Purposes Licensing Sub-Committee, the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that where a member of the public has the right to make representations, answer questions, or give evidence, then a member will have the same right, after which the member must then withdraw from the room for the rest of that item and play no further part in the discussion or vote.—(This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees)

1.129 No amendment to any licence application shall be considered at the Licensing Committees unless it can be taken into account without causing prejudice to objectors or persons who might otherwise have objected.

2. Site visits

2.1 If a site visit takes place, its purpose is to gain information relating to the premises which are the subject of the licensing application or revocation to be considered by the Licensing Committees. A site visit may also assist members in matters relating to the context of the application or revocation, the characteristics of the premises and the surrounding area. Members should avoid expressing opinions during site visits to any person present, including other members.

2.2 During site visits, members of the Licensing Committees shall not engage individually in discussion with applicants or objectors.

2.3 On site visits applicants, agents, objectors or other interested parties shall only be permitted to point out to Members features to look at either on the premises or in the vicinity, which are relevant to the application. No discussion will take place on the merits of the application or revocation.

2.4 A Member of a Licensing Committee may request a site visit, prior to the meeting of the Committee, in which case their name shall be recorded. They shall provide and a record be kept of:

- (i) their reason for the request; and
- (ii) whether or not they have been approached concerning the application and if so, by whom

and unless the member provides these at least one week prior to the relevant meeting, the site visit will not proceed.

- 2.5 If any Member of a Licensing Committee wishes to informally view an application site then that viewing must only take place if it can be done from a public place. Members of Licensing Committee shall not enter any premises which are the subject of a licensing application or known by them to be likely to become such in order to meet the agent, applicant, licensee or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a member is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out provided that the member is accompanied by a licensing officer.

3. Involvement of officers

- 3.1 Members of the Licensing Committee shall not attempt in any way to influence the terms of the officers' report upon any application.
- 3.2 Any criticism by Members of the Licensing Committees or an officer in relation to the handing of any licence application shall be made in writing to the Strategic Director Environment and Neighbourhoods ~~Director of Health Safety and Licensing~~ and *not to the Officer handling the application*. No such criticism shall be raised in public.
- 3.3 If any officer feels or suspects that pressure is being exerted upon him/her by any member of the Council in relation to any particular application, he or she shall forthwith notify the matter in writing to the Monitoring Officer ~~Director of Health, Safety and Licensing~~.
- 3.4 If any officer of the Council who is involved in dealing with any licensing application has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Monitoring Officer ~~Director of Health, Safety and Licensing~~ and take no part. This public register to be available for inspection at Licensing Committee meetings.
- 3.5 No officer of the Council shall engage in any paid work for any licensing matter for which Brent is the Licensing Authority other than on behalf of the Council.

4. Conduct of meetings

- 4.1 Members of the Licensing Committees shall refrain from personal abuse and party-political considerations shall play no part in the committee's deliberations. Members shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors and shall not bully any person. Members should not make up their minds before hearing and considering all relevant information at the meeting and should not declare in advance of the meeting how they intend to vote on a particular application.

- 4.2 The ~~Monitoring Officer Director of Health, Safety and Licensing~~ shall maintain a register of contact made by applicants, licensees, objectors, agents or interested parties with individual members of the Council on each and every licence application.
- 4.3 Members of the Licensing Committees should not speak to members of the public (including applicants and agents) during a meeting of the Licensing Committee or immediately prior to or after the meeting concerned other than in accordance with this Code or Standing Orders.
- 4.4 When questioning witnesses at a meeting of a Licensing Committee, members shall ensure that their questions relate only to licensing considerations relevant to the particular application.
- 4.5 The Licensing Committee should hear both sides of the case, in accordance with the rules of natural justice. ~~This means that .t The~~ Committee must ensure that both the applicant and the objectors receive a fair hearing. Applicants must have the opportunity *in advance of the hearing* to prepare their case in answer to the objectors.
- 4.6 ——— It is permissible for the Chair of the meeting to curtail statements of parties or witnesses, if they are merely repeating matters which have already been given in evidence.
- 4.7 ——— Hearsay evidence, whilst admissible, must be treated with great reservation by members, who must make an assessment of its weight and credibility.
- 4.86 When new matters are raised as objections by any person at a hearing of the General Purposes Licensing Sub-Committee, the Committee is not obliged to hear them. However, if members feel that the new matter raised by the objector should be considered, but the applicant needs further time to consider his/her response then the applicant should be offered an adjournment of the meeting (either for a short period during the meeting itself or if necessary to a new date). (This paragraph does not apply to the Alcohol and Entertainment Licensing Sub-Committees, as new objections cannot be raised at the hearing)

5 **Licensing Sub-Committee Procedures**

Alcohol and Licensing Sub-Committee

(A) The following procedure should be followed at meetings of the Alcohol and Entertainment Licensing Sub-Committees.

A.1 The Chair will ask the parties to the hearing to identify themselves and confirm whether they are represented or not.

A.2 The sub-committee will consider any requests that have been made by any party for another person to speak at the hearing.

A.3 The Chair will explain the procedure to be followed at the hearing.

A.4 Where there are a number of parties bringing representations either in support or objection to the granting of the licence application officers will attempt before the hearing to agree a limit in the number of people who will address the sub-committee.

A.5 If any party has indicated that they will not attend or failed to indicate whether or not they will attend and is absent, the Sub-Committee may hold the hearing in that party's absence or decide to adjourn.

A.6 A Licensing Officer will give details of the application and of the number and type of representations received as set out in the papers circulated.

A.7 Persons who have made representations will be allowed to address the sub-committee for up to 5 minutes each (unless the Chair permits a longer period). They should not repeat what is already set out in their representations or notice. In their address they should provide clarification on any points previously requested by the Council. Petitions will be treated as representations provided they meet the requirements for relevant representations set out in the Licensing Act 2003. Members should proceed with caution when relying upon petitions used as evidence due to the structure and wording used.

A.8 The order in which persons making representations shall be called to speak is as follows;

- i. Statutory Parties including the Police, Environmental Health, Fire Authority, Child Protection Unit or other bodies as appropriate
- ii. Interested parties making representations in objection to the licence application
- iii. Interested parties making representations in support of the licence application

A.9 The members of the sub-committee may ask questions of the person making representations after their address.

A.10 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.11 Where a person making relevant representations has requested that another person be permitted to speak and the sub-committee have allowed this under 2 above, they ~~may will~~ be entitled to speak for up to 5 minutes (~~if unless~~ the chair permits ~~this a longer period~~) after questioning of the objector who made the request and provided that this does not disadvantage another party to the proceedings.

A.12 The members of the sub-committee may ask questions of such other person after they have spoken.

A.13 Officers may ask questions of such person in order to clarify points for the sub-committee.

A.14 The same procedure as set out in 2.7 to 2.11 above is followed in respect of the applicant.

A.15 The members of the sub-committee may ask further questions of any party or other person allowed to appear at this stage.

A.16 Cross examination of any party or any other person allowed to appear will not be allowed unless specifically permitted by the Chair.

A.17 The sub-committee will consider its decision in private save that the licensing officer, legal adviser and committee clerk will be entitled to remain.

A.18 The Chair will intervene at any stage of the hearing to prevent repetitious or irrelevant points being raised.

A.19 Documentary evidence will only be considered by the Sub-Committee if this has been provided to the Council and the other party (or parties) prior to the hearing, or with the consent of other parties, at the hearing. The Chair does have the discretion to accept the filing of late evidence provided that all relevant parties agree and are not adversely affected by late disclosure. Each case will need to be looked at on its own merits and advice given by officers accordingly.

(B) General Purposes Licensing Sub-Committee

The following procedure should be followed at meetings of the General Purposes Licensing Sub-Committee.

B.1 The Chair outlines details of the application

B.2 The Chair invites identification of persons at the meeting:

- the applicant;
- those attending to object or give evidence; and
- those Officers and Members forming the Committee.

B.3 The Chair outlines the procedure of the hearing to those present

B.4 The Objectors state their case:

- The individual objectors (or their representatives) will be invited to state their case;

- The applicant (or their representative) will be invited to question the objectors or their witnesses; and
- Members of the Committee may ask questions of the objectors through the Chair.

B.5 Non-Members of the Committee (if any present) will address the Committee

- Non-members who are entitled to address the Committee (see 1.6 above) and wish to, will be invited to do so.
- The applicant (or their representative) will be invited to question the non-members who have spoken.
- The objectors (or their representative) will be invited to question such non-members.
- Members of the Committee may ask questions of such non-members through the Chair.

B.6 The Technical Officers Report

- Where appropriate, technical officers advising the Committee will make their observations.
- The applicant and objectors will be invited to ask questions of the technical officers.
- Members of the Committee may ask questions of the technical officers through the Chair.

B.7 The Applicants State Their Case

- The applicant is invited to state their case.
- The objectors (or their representative) will be invited to question the applicant.
- Members of the Committee may ask questions of the applicant through the Chair.

B.8 Summing Up

- The objectors will be permitted to “Sum Up”.
- The applicant will be permitted to “Sum Up”.

6. **Making the decision**

- 6.1 The decision whether or not to grant a licensing application is a decision for the members of the Licensing Committee only. ~~–[The assessment of the weight and credibility of evidence is for Committee members alone to decide.]~~
- 6.2 Members shall retire to decide the matter in closed session. The Legal Officer, Licensing Officer and Democratic Services Officer present at the meeting will retire with them. During such closed session, the Legal Officer and Licensing Officer will only provide advice on legal issues relating to the application. The Licensing Officer will not accompany the Members when they retire to make their decision where licensing officers acting on behalf of the Licensing Authority itself have requested the review of a licence or are making representations against the grant of a licence.
- 6.3 In accordance with regulations, members of the Alcohol and Entertainment Licensing Sub-Committees should disregard any information provided by any party which is not relevant to;
- a) their application, representations or notice (as applicable); and
 - b) the promotion of the licensing objectives or the crime prevention objective where notice has been given by the Police
- 6.4 The Licensing Committee will return to open session to announce its decision, and will confirm its decision in writing with reasons usually within 5 working days (in respect of the Alcohol and Licensing Sub-Committee) and 7 days (in respect of the General Purposes Licensing Committee). The written notice will set out comprehensively the reasons why the Licensing Authority arrived at its decision in considering the application together with the rights of appeal against a decision.
- 6.5 Members own knowledge of the circumstances surrounding an application is valid, provided that they are put to the applicant for a response. In reaching their decision members must have regard to the evidence presented at the hearing, both the documents circulated in advance and the oral evidence. The decision must be based on the evidence alone and members have a duty to ensure that they have regard to all the relevant matters before them and only those matters.
- 6.6 Members considering an application have a duty to determine it only on the facts before them relating to that individual case and not decide it as a matter of general policy. Members must not make unreasonable decisions that no other reasonable licensing authority would arrive at, having regard to the legal principle of “Wednesbury reasonableness”.
- 6.7 Members should be aware that an unreasonable decision taking into account the above criteria, is unlikely to be sustained on appeal. In this instance, the authority foregoes the opportunity to attach terms and conditions to a licence and may have to pay costs. The role of officers is to point this out and advise members as to the potential risk of losing an appeal and being required to pay the other parties costs as a consequence. This needs to be balanced with the Council’s fiduciary duty towards the local taxpayer in terms of the Council being a public body spending public money.

7. Appeals

- 7.1 The Licensing Committee's decision is not a final one. In respect of decisions of the General Purposes Licensing Sub-Committee, the applicant has the right to appeal to the Magistrates Court, subsequently to the Crown Court (or in certain instances directly to the Crown Court), and beyond.
- 7.2 In respect of decisions of the Alcohol and Entertainment Licensing Sub-Committees, all parties (the Applicant(s), interested parties and responsible authorities) have the right of appeal to the Magistrates' Court. The Magistrates' decision is however final.
- 7.3 An appeal must be lodged with the Justices' Chief Executive for the Magistrates' Court within 21 days beginning on the day on which the appellant was notified by the Licensing Authority of the decision to be appealed against.
- 7.4 On such appeals the hearing takes on an increasingly formalised nature, based solely on the evidence given. The Council will only be able to sustain its defence if it can substantiate its grant or refusal of a licence by relevant admissible evidence.
- 7.5 Members who consider basing the grant or refusal of a licence on their personal knowledge should be prepared to testify to the relevant facts in any appeal proceedings.
- 7.6 Taking this factor into account along with the real risk of costs against the Council, members must be wary of relying on any matters which could not readily be proved in evidence. In short, for Committee decisions to "stand up" on appeal and to avoid costs being awarded against the Authority, decisions to grant or refuse licences or impose conditions must be justified.

8. TRAINING

- 8.1 Members of the Licensing Committee (and alternate members) must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Member of the Licensing committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Licensing Committee.
- 8.2 Members should be aware that training is particularly important for members who are new to the Licensing Committee and for members who have not attended training in the recent past.
- 8.3 Where a member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

ANNEXE 1

Convention Rights

ARTICLE 6

Article 6 of the European Convention on Human Rights provides (in part):

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

The Licensing Committee's decisions on most licensing functions are subject to independent tribunals, usually the Magistrates' or Crown Courts, so satisfying the provisions of Article 6.

The Committee must however conduct a fair hearing in accordance with the rules of natural justice.

ARTICLE 1 OF THE FIRST PROTOCOL

Article 1 of the First Protocol also has relevance to the licensing function. This states:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

An existing licence is a possession under Article 1 of the First Protocol.

Any decision to, for example, revoke a licence must be according to the law. Any decision to impose terms and conditions on the grant of a licence will need to be proportionate and necessary to protect the interests of a democratic society.

Article 1 of the First Protocol also has relevance in respect of any third parties objecting to a licensing application, because of their right to the enjoyment of their property.

ARTICLE 8

The impact of a decision on a neighbouring property also brings into play the right to respect for home, privacy and family life (Article 8)

Article 8 states:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others."

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REVIEW OF BRENT COUNCIL PLANNING CODE OF PRACTICE

1. Introduction

I am an independent consultant working with local authorities on a range of Standards matters. In December 2013 I was commissioned to carry out an independent review of Brent council's Planning Code of Practice, and to address the following areas:

- 1.1 Is the Planning code legally accurate, robust and fit for purpose?
- 1.2 Is the Planning code effective in practice? Are any changes needed regarding the implementation of or monitoring of the application of the Code, to ensure good practice?
- 1.3 Do members understand the Code and apply it appropriately? Is additional training or other assistance required?
- 1.4 Are there any other issues regarding the Code's application and usefulness?
- 1.5 Are there aspects of the main Member code of conduct, in particular with regard to member interests, that could usefully be amended?

2. Summary

2.1 My review did not uncover any significant problems with member and officer compliance and implementation of the Planning code. The members and officers I interviewed raised some issues regarding; member understanding of the code; member attendance at training; and areas where the guidance could be clarified or strengthened to ensure best practice. The Planning code itself has, with the passage of time, fallen out of step with the council's Member code and with new legislation and guidance. It would be sensible to amend or expand on guidance in the Planning Code to take account of the issues that members and officers have raised and to ensure that the Code is effective for the future. I have focussed my recommendations on suggested changes to the content of the Code to ensure that it is legally accurate robust and fit for purpose.

2.2 I recommend that the Planning code should be amended as follows:

- a) To expand existing Code guidance on predetermination and bias (in light of section 25 of the Localism Act 2011), natural justice and human rights
- b) To include the statutory obligations on members regarding their Disclosable Pecuniary Interests (DPIs)
- c) To set out the risks to the member and to the Council of a member failing to comply with the Planning Code
- d) To include further guidance how members should behave at site visits to avoid any perception of bias and to ensure that no discussion takes place on the merits of an application.

- e) To address members obligations with regard to attendance at relevant training
- f) To include guidance on how any Lead member appointed to the committee should deal with applications made by the council itself.

2.3 Planning members should be reminded that they are required to notify the Monitoring Officer in writing of any approach that is made to them by an applicant, agent or any interested party in a planning matter, so that the council's register of approaches can be properly maintained.

3. Background

3.1 Members and officers of the council are obliged to follow the Planning Code as part of the Brent Member's Code of Conduct. The main objectives of the Planning code are to guide members and officers dealing with planning matters and to set out for the public the standards adopted by the Council in the exercise of its Planning function.

3.2 The council's current cycle of review of the Planning Code is every two years. The last review took place in 2010 and reviewed the period 2008 to 2009. In 2012 a review began but could not be completed. My review has taken account of the period 2012 to 2013. I have also had regard to the 2010 review recommendations.

4. Review Process

4.1 I was asked to consider the effectiveness of the Planning Code by reference to; the decisions made and processes adopted as recorded in the minutes of committee meetings in quarters 1 and 3 in 2012, and in quarters 2 and 4 in 2013; and by interviews with relevant members and officers. I have also considered information on member training under the council's elected member development programme and additional training provided by legal and planning officers.

4.2 I have taken account of relevant legislative changes in the Localism Act 2011, new government guidance on member conduct and of the updated guidance on "Probity in Planning for councillors and officers" provided by the Local Government Association.

5. Findings

The content of the Code

5.1 The Planning Code does not reflect the most recent legislation and guidance on the issue of bias and predetermination. Planning members must know how to approach those issues in order to reduce the risk of a legal challenge to the council's decisions. Planning members take part in a quasi-judicial or formal regulatory process and must follow the rules of natural justice. They must also consider human rights. I recommend that the Planning code be amended to give guidance predetermination

and bias, in light of section 25 of the Localism Act 2011, and to summarise the rules of natural justice and human rights. My proposed wording is set out in new paragraphs 1 to 7 in Appendix 1

- 5.2 The Planning Code has not been updated to refer the member obligations regarding Disclosable Pecuniary Interests (DPI's). Those are legal obligations and a failure to comply with them can lead to criminal sanction. The council's 2012 Member code does set out what members are required to do when they have a DPI. The Planning Code should be amended to include member obligations regarding DPI's. My proposed wording is set out in new paragraphs 12 to 14 in Appendix 1
- 5.3 The Planning Code refers members to obligations regarding personal and prejudicial interests. In contrast the 2012 Member Code only refers to obligations regarding DPIs. In 2013 the government issued new guidance on openness and transparency with regard to member interests, encouraging members and councils to consider registration and/or declaration of other interests. In April 2013 the LGA issued updated guidance to members on Probity in Planning. In light of the new guidance I recommend that the Member code be revised, to require members to register personal interests and to declare any personal and prejudicial interests at meetings. I have set out the basis for that recommendation and the suggested amendments to the Member code in Appendix 2 to this report. If that recommendation is accepted then the current references to personal and prejudicial interests in the Planning code can remain unchanged.

Compliance with Code procedure for declaring interests and disclosing approaches

- 5.4 I considered the minutes and reports of Planning Committee meetings in Quarters 1 and 3 2012 and Quarters 2 and 4 2013. The minutes show that Planning members have been identifying and declaring relevant personal interests or approaches. Ward members who address the committee also declare approaches. The minutes show that some Planning members are unsure about the difference between a personal interest and an approach. I interviewed Mr Stephen Weeks (Head of Planning). Mr Weeks said that members do appear to doubt their own judgement about interests, and then seek legal advice on the issue during discussion of the agenda item. The Legal and Member Services officers confirmed that members are encouraged to seek early advice and where possible before a meeting if they believe they may have an interest in an item on the agenda, rather than raise the issue only when the agenda item is being discussed. I note that members have also had similar advice in writing from the Monitoring Officer.
- 5.5 Planning members confirmed at interview that members are generally aware of the need to declare interests. Members ask for legal advice at the meeting if they are unsure. Some members said that it is not always easy to know if they have a conflict of interest arising from their involvement with, for example, a local community group, and they would welcome guidance on this. I note that setting out the definitions of personal and prejudicial interests in the Member code would also assist members in deciding whether they have a conflict of interest arising from their membership of outside groups and organisations.

- 5.6 The Committee minutes show that members are given appropriate officer advice on withdrawing from the meeting if they have a prejudicial or a disclosable pecuniary interest, and that members usually act accordingly. I found only one instance in the review period where a member was not recorded as withdrawing from the room after being advised that his declared interest was a disclosable pecuniary interest. The minutes did record that the member took no further part in the discussion or vote.

Appropriate use of Call-in procedure

- 5.7 The planning team managers confirmed that members of the council who “call in” a planning matter are complying with procedure by giving planning reasons for the call-in and notifying officers of approaches made to them. However officers noted that sometimes the ward members who had asked for the “call in” did not then attend and speak at the planning meeting. The Head of Planning commented that members should be advised to consider if a Call-in is in fact the only way of achieving their objective of representing their constituent’s interest, taking account of the additional costs to the council when a matter that could be decided by officers has to be sent to and decided at Planning Committee. In light of the officer comments I have proposed an amendment at new paragraph 21 in Appendix 1

Approaches and the register of approaches

- 5.8 Planning members do not appear to routinely notify the Monitoring Officer in writing of approaches made to them by applicants, objectors and interested parties, which they are required to do under the current Planning code. The members interviewed said that they notify the member services officer by email, or at the Planning committee meeting, but do not take any other formal step. The minutes show that members are correctly disclosing any approaches at Planning meetings. I recommend that planning members be formally reminded of their obligation to notify the Monitoring Officer in writing.

Compliance with requirements regarding Site Visits

- 5.9 I interviewed Councillor Ketan Sheth, the Chair of Planning. Councillor Sheth said it is difficult to ensure that members consistently comply with the Planning code requirements for site visits. The issues he identified were; members failing to stay together in one group; some members having their own discussions with the public or ward councillors present; and the perception that some members may discuss the merits of an application between themselves. Councillor Sheth’s concern was that this behaviour could lead the applicant or objectors to believe that those members had “taken a side” before an application comes to Committee.
- 5.10 The planning members I interviewed agreed that site visits present particular challenges for members. Members felt that members should not greet individuals that they recognise during site visits in an overly friendly way, as this can look like favouritism. One member commented that sometimes members speak to each other, and to members of the public, in a language that not everyone present can

understand. That member recognised that this might be necessary in order to communicate with some members of the public but was concerned that other people present could not then know what was discussed.

- 5.11 The planning team managers said that the Chair of Planning takes a robust line at site visits to ensure that members know what they should and should not do. Officers noted that the behaviour of the public is a factor as members can be put under pressure to engage in discussion. The Head of Planning noted that holding a site visit and inviting members of the public to attend raises the false expectation that members will be able to discuss the merits of an application with them. He suggested that the council's letter notifying the public about a planned site visit could be made more explicit regarding the restrictions on what members can and cannot discuss with the public during the site visit.
- 5.12 I note that it is impractical to expect members not to courteously acknowledge members of the public already known to them when they attend site visits. It is not however unreasonable to expect members to strictly comply with the requirement that they refrain from discussing, or appearing to discuss, the merits of an application, either with other Planning members or with any other person present. I recommend an amendment to the wording of the Planning Code guidance on site visits, to make this clear. My proposed amendment is at new paragraph 30 in Appendix 1

Planning committee decisions made contrary to officer recommendation

- 5.13 The Planning Code sets out the procedure that Planning members should follow if members wish to grant, or refuse, planning permission contrary to officers' recommendation. The process includes an automatic deferral of the decision where the members are minded to grant permission, and the discretion to defer where it is not possible to formulate planning reasons for refusal then and there. This allows time for officers to respond to any issues that members have with the officer recommendation. The Chair of Planning noted that this deferral process allows for constructive discussion and compromise and thus an outcome that can satisfy all parties. The evidence is that this process allows the Committee to keep the number of decisions taken contrary to officer recommendation to a low number. The Chair of Planning said that where the Planning Committee does take a decision against officer recommendation they will give proper planning reasons for their decision. Planning and legal officers confirmed that the Committee does give those planning reasons. I note that the 2010 review identified a problem with the Committee not always giving planning reasons. The evidence is that this process is now being implemented correctly.

Compliance with Code guidance on conduct at Planning Committee meetings

- 5.14 The Chair of Planning and the Head of Planning drew my attention to the challenges posed for members by contentious planning applications. One example was a contentious application regarding a place of worship which came to the committee for decision during 2013. A resident complained to the Chief Executive about the

conduct of that Planning Committee. The complaint was focussed on; whether some members' questions or statements showed that those members did not understand the planning grounds; whether members had properly declared all approaches and interests; and whether members had really kept an open mind regarding the application. That complaint was dealt with as a corporate complaint and resolved informally. Officers provided a training session for Planning members to consider what lessons could be learned regarding planning issues, and the Monitoring Officer provided Planning members with further training on the Member code issues.

- 5.15 The Planning code contains appropriate guidance to members on how they should conduct themselves at meetings with regard to; demonstrating they have an open mind; declaring interests and approaches; and making sure that their questions and statements relate only to relevant planning matters and to the material considerations on which they may base their decisions. Planning members are individually responsible for complying with the Code. In this review both the Chair of Planning and officers have commented that the Chair must regularly remind some members at committee that their questions and statements should only relate to the material planning considerations. The corporate complaint regarding one 2013 Planning Committee decision does highlight the potential for damage to the council's reputation as a planning authority if there is a public perception that members are not following the Planning Code.

Training

- 5.16 Members are offered a structured training programme under the Elected Member Development programme. Planning members and alternates receive additional tailored training from legal and planning officers. Newly appointed members of the Planning Committee always receive induction training before taking up their position on the committee. Members also have access to detailed Monitoring Officer Advice notes on issues relevant to their work. These notes are published on the Intranet in a dedicated folder.
- 5.17 The Chair of Planning has extended the pre-briefing meeting held before Planning Committee to include time for members to receive informal "mini-training" sessions. The Chair and the officers chose the training topics. The members interviewed said that this pre-briefing training was very useful and that legal and planning officers did an excellent job in keeping members up to date on planning issues.
- 5.18 Officers have responded to member requests about the delivery of training courses and are moving away from the "power point" model for training to deliver more training based on case studies, as members find these particularly helpful.

Attendance at training

- 5.19 The council acknowledges the importance of members with a quasi- judicial and regulatory role receiving all necessary training. This is referenced in the Elected Member Development programme and was also noted by the external assessors

who have just awarded the council renewed London Charter status for elected member development

- 5.20 Members and officers comment that not all Planning members and alternates attend the refresher training that is offered. The Chair of Planning's view is that not only induction training but also refresher training should have some mandatory element. The legal officer confirmed that given the quasi-judicial nature of the member role in the Planning function, it was important that members attended training to reduce the risk of a legal challenge to the council. It may be unreasonable to make attendance at all training sessions mandatory. The council may however want to consider introducing a small number of mandatory training activities. If that option is chosen then my recommended wording is at new paragraphs 46 to 48 in Appendix 1

Membership of the Planning Committee

- 5.21 During my review members and officers have expressed views on how the council might ensure that a member appointed to the Planning Committee has the appropriate skills and experience for the role. The composition of the Committee is not something that the Planning Code of Practice addresses and it is outside the remit of my review. The only aspect that I have considered is whether the Code should include guidance that would be of particular relevance to any Leading member who was appointed to the Committee.
- 5.22 There are no members of the council's Executive (Lead members) currently on the Planning Committee, although they may attend as alternates. The Head of Planning's view is that a Lead member with an appropriate portfolio should be appointed to the Planning Committee, to bring relevant experience and to raise the profile of the Committee's work. Relevantly, the Local Government Association has advised:-

"Authorities will usually have a cabinet/ executive member responsible for development and planning. This councillor is able to be a member of the planning committee. Leading members of a local authority, who have participated in the development of planning policies and proposals, need not and should not, on that ground and in the interests of the good conduct of business, normally exclude themselves from decision making committees". (Probity in Planning April 2013)

- 5.23 It is a matter for the council to decide whether to appoint a Lead member to the Planning Committee and that may happen at some future point. In that context I note that there is no guidance in the current Planning Code on how members of the Committee should approach the issue of any perceived bias or lack of impartiality when members are considering a planning application made by the council itself, or where the council is the landowner. I suggest an amendment to include this guidance. My recommended wording is at new paragraph 23 in Appendix 1.

Belinda Shaw
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March 2014

BS REPORT - APPENDIX 1 PROPOSED CHANGES TO PLANNING CODE OF PRACTICE

Purpose of this Code

The Planning Code of Practice has been adopted by Brent Council to regulate the performance of its planning function. Its major objectives are to guide Members and officers of the Council in dealing with planning related matters and to inform potential developers and the public generally of the standards adopted by the Council in the exercise of its planning powers. The Planning Code of Practice is, in addition to the Brent Members Code of Conduct, adopted by the Council under the provisions of the Localism Act 2011 ~~at Government Act 2000~~. Members should follow the requirements of the Brent Members Code and apply this Code in light of the Member Code. The purpose of this Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters.

The Code seeks to ensure that officers and members consider and decide planning matters in a fair n impartial open and transparent manner. The provisions of this code are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members of the Planning Committee making such decisions are, and are perceived as being, accountable for those decisions. The Code is also designed to assist members of the Council in dealing with and recording approaches from developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

If a member does not abide by this Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision; and the member may be at risk of either being named in a report to the Standards Committee or Council; or if the failure to abide by the Code is also likely to be a breach of the Member Code of Conduct, of a complaint being made to the Monitoring Officer.

If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

General

1. Members of the Planning Committee shall determine applications in accordance with the Unitary Development Plan unless material considerations indicate otherwise. ~~This Code sets out further rules applicable to the planning process in Brent.~~ The Brent Members Code of Conduct and the law relating to Brent Council members' disclosable pecuniary interests, personal interests and prejudicial interests must be complied with throughout the decision making process. Decisions should not be influenced by the personal or prejudicial interests of Councillors or because of undue pressure exerted by applicants, agents or third parties. Members of the Planning Committee must take decisions in the public interest and take account only of material planning considerations. They should not allow themselves to be influenced by members of the public and developers who might approach them and they should not be influenced by party politics. ~~This Code sets out further rules applicable to the planning process in Brent.~~
2. The council's planning process is a quasi-judicial process and members of the Planning Committee have a duty to follow the rules of natural justice and in accordance with the council's duty to act in a way that is compatible with Convention rights under the Human Rights Act 1998.

3 The rules of natural justice include; the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That principle means that members must be and be seen to be impartial and without bias, and that members should not take part in any decision that affects their own interests.

4 The Human Rights that are particularly relevant to Planning decisions are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions.

Bias and Predetermination

5 Members should not take a decision on a matter when they are actually biased in favour or against the application, or when it might appear to a fair and informed observer that there was real possibility of bias, or where a member has predetermined the matter by closing their mind to the merits of the decision before they come to take it.

6. Section 25 of the Localism Act 2011 provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.

7. Although the Localism Act recognises the reality of the role of members in matters of local interest and debate, it does not amount to the abolition of the concept of pre-determination. A member taking part in a decision on a planning matter must be open to any new arguments about the matter up until the moment of a decision. A member should not comment or make any commitment in advance as to how they intend to vote which might indicate that they have closed their mind. Any planning decision made by a member who can be shown to have approached the decision with a closed mind will still expose the council to the risk of legal challenge.

Review of Code of Practice

~~2. The Director of Legal and Procurement is instructed to commission a report independent of the planning service once every two years on the operation of this Code of Practice. The report should address the extent of compliance with the Code by officers and members, contain an analysis of decisions being made against officers' recommendations and set out any appropriate recommendations for improvement. This report should be presented annually to the Standards Committee.~~

Accountability and Interests

~~3. Except as provided for in paragraph 7 of this Code members of the Council should not take part in any discussion of, or vote on, any item if they or their relative, friend or associate is the applicant, agent or objector for that matter.~~

84. Members of the Council who have business or other interests which may bring them into contact with the Council's planning system on a regular basis should not be

considered for membership of the Planning Committee. Those interests might include acting as an agent or consultant with respect to planning applications in the borough

95. Members of the Council who are consistently unable to support the Council's planning policies should not be considered by their political group for membership of the Planning Committee.
106. If the Chair decides to allow a non-member of the Committee to speak, the non-member shall state the reason for wishing to speak. Such a member shall disclose the fact that he/she has been in contact with the applicant, agent or interested party if this be the case.

Interests

117. If a member of the Council has a personal interest in any planning application or other matter before the Planning Committee, then the member shall, if present, declare a personal interest at that meeting, unless the interest arises because the member is a member of or is in a position of general control or management in a body to which they were appointed or nominated to by the Council or that exercises functions of a public nature. In which case the member only needs to disclose the personal interest if they address the Planning Committee meeting on that item.
- 12 If a member has a disclosable pecuniary interest in any planning application or other matter before the Planning Committee, and the interest is not entered in the council's register, the member must disclose the interest to the meeting.
- ~~138. If a member has a disclosable pecuniary interest or personal interest in a matter and if that interest is also a prejudicial interest in a planning matter, the member shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter, save that where a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then a member will have the same right. Once the member has exercised that right then they may make representations, answer questions or give evidence in respect of the application or matter in question in so far as the public have the right to do so. A the member must then withdraw from the room for the rest of that item and play no further part in the discussion or vote.~~
- it.
149. If a member of the Council has a disclosable pecuniary interest or a prejudicial interest in a planning application or other matter before the Committee, he/she shall not exercise his or her discretion to require the application or other matter to be referred from officers to the Planning Committee for consideration and nor shall he/she exercise his/her right to request a site visit.
150. For the avoidance of doubt, where a member of the Council is a Freemason or a member of a similar secret society and is aware that the applicant, agent or other interested party in relation to a particular planning application is also a Freemason or a member of the same secret society, the member shall treat this as a prejudicial interest for the purposes of paragraphs 138 and 14 above.
164. The Monitoring Officer shall maintain a register of contact made by applicants, agents or interested parties with individual members of the Council on each and every planning application, in which members of the Planning Committee must record

approaches referred to in paragraph 24-17 and other members of the Council may record such approaches if they so wish.

172. If any officer of the Council who is involved in making recommendations or decisions on planning applications has had any involvement with an applicant, agent or interested party, whether or not in connection with the particular application being determined, which could possibly lead an observer with knowledge of all the relevant facts to suppose that there might be any possibility that the involvement could affect the officer's judgement in any way, then that officer shall declare a prejudicial interest in the public register held by the Strategic Director Regeneration and Growth and take no part in the decision making process. The declaration of such interest shall also be recorded in the minutes of the meeting. This public register to be available for inspection at Planning Committee meetings.

183. No officer of the Council shall engage in any paid work for any town planning matter for which Brent is the Local Planning Authority other than on behalf of the Council.

194. In relation to all matters not addressed above, all such officers shall comply with the Royal Town Planning Institute Practice Advice Note No.5 relating to Consultancy by Current and Former Employees or any guidance replacing this.

Call-in powers

20-15. Where under the provisions of the Constitution three members of the Council ask for an application or other matter to be decided by Committee rather than by officers, their request shall state:

- (i) the reason(s) which should solely relate to matters of material planning concern why they feel the application or other matter should not be dealt with under delegated powers; and
- (ii) whether or not they have been approached by any person concerning the application or other matter and if so, by whom.

This information shall then be included in the relevant Planning Committee report.

Unless the request and the necessary supporting information outlined above has been provided by both members at least one week prior to the relevant meeting then the matter shall proceed to be determined by officers in accordance with their delegated powers.

21 A member considering using the "call-in" power should consider whether their objective could be achieved by an alternative means, for example by discussing the matter further with the relevant officer or facilitating a meeting between an objector and an officer, bearing in mind the additional cost to the council when a matter has to be considered by Committee.

Development proposals submitted by Councillors who sit on the Planning Committee

2246. The Council's monitoring officer should be informed of such a planning application and the application should be reported to the Planning Committee and not dealt with by officers under delegated powers.

Development proposals where the Council is the applicant or landowner

23 Where the council itself is the landowner or planning applicant then a Planning member should consider whether he or she has had such a significant personal involvement in advocating for, preparing or submitting the planning proposal that the member would be likely to be perceived as no longer able to act impartially or to determine the proposal purely on its planning merits. A member would not be required to withdraw simply because they were, for example, a member of both the Cabinet, or a proposing committee, as well as the planning committee. However a member with a relevant portfolio or individual responsibility for implementing a particular policy should carefully consider whether that role makes it inappropriate for them to participate in a particular planning decision.

Approaches to members of the Planning Committee

2447. If an approach is made to a member of the Planning Committee from an applicant or agent or objector or other interested party in relation to a particular planning application or any matter which may give rise to a planning application, the member of the Planning Committee shall:

- (i) inform the person making such an approach that such matters should be addressed to officers or to members who are not members of the Planning Committee.
- (ii) disclose the fact and nature of such an approach at any meeting of the Planning Committee where the planning application or matter in question is considered; and
- (iii) record the approach in the register maintained by the Monitoring Officer under paragraph 11.

For the avoidance of any doubt, if the applicant, agent or objector or other interested party attend and/or speak at a Council organised briefing for members of the Planning Committee then that briefing does not constitute an approach which has to be registered with the Monitoring Officer or disclosed under (ii).

2548. Where a planning application is to be determined under delegated powers Councillors should not put improper pressure on officers for a particular recommendation or do anything which compromises, or is likely to compromise the officer's impartiality.

Site Visits

2649. ~~Save as provided by paragraph 14 above, any Save as provided by paragraph 9 above, if~~ two members of the Council can request a site visit prior to a meeting of the Planning Committee at which the application in respect of the request is to be considered. ~~The members, they~~ shall provide the following details at least two weeks before the date of the meeting at which the application is to be considered and a record shall be kept of those details:

- (i) their name;
- (ii) the reason for the request; and
- (iii) whether or not they have been approached concerning the application or other matter and if so, by whom.

If the details are not provided then the site visit shall not proceed. Alternatively, during any meeting of the Planning Committee, any member of the Planning Committee may request a site visit in respect of any application on the agenda of the meeting. The member must give the reason for the request.

~~270.~~ The purpose of a site visit is to gain information relating to the land or buildings which are the subject of the planning application or other matter to be considered by the Planning Committee. A site visit may also assist members of the Planning Committee in matters relating to the context of the application or other matter in relation to the characteristics of the surrounding area. ~~Members attending the site visit should avoid expressing opinions on site visits to any person present.~~

~~284.~~ Members of Planning Committee shall not enter any premises which are the subject of a planning application or other matter or known by them to be likely to become such in order to meet the agent, applicant or other interested party, save in the course of a formal accompanied site visit. In exceptional circumstances such as where a member of the Planning Committee is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out provided that the member is accompanied by a planning officer.

~~292.~~ On site visits applicants or other interested parties shall only be permitted to point out to those members of the Planning Committee attending the site visit the features to look at either on the site or in the vicinity, which are relevant to the application or other matter. No discussion will take place on the merits of the application or other matter.

~~3023.~~ Whilst on site visits, members of Planning Committee shall keep together as a group and shall not engage individually in discussion with applicants or objectors. Members should take care not to show any apparent partiality to people they already know when acknowledging members of the public or applicants that are present. Members attending the site visit should avoid expressing opinions about the application either to another Planning member, or to any person present.

Membership and Jurisdiction of the Planning Committee

~~3124.~~ When the membership of the Planning Committee is determined, care shall be taken to ensure that for each Ward there is always at least one Councillor who is not a member of Planning Committee. This is so that there will always be a Councillor who is not a member of the Planning Committee with whom residents will be able to discuss planning matters.

~~3225.~~ Any briefings which may be held prior to the Planning Committee meetings shall be open to all members (and alternates) of the Planning Committee. These briefings can help to speed up decision making by giving officers notice of additional information members of the Planning Committee may require at the meeting.

~~3326.~~ All members of Planning Committee, and in particular the Chair, shall be informed from time to time about the relevant provisions concerning access to information contained in the Local Government Act 1972 and in the event of any dispute between members of the Planning Committee and officers as to the application of the 1985 Act, the advice of the Director of Legal and Procurement or his or her representative shall be obtained forthwith.

Meetings of the Planning Committee

- | 3427. No material revision to any planning application which might lead to a change in the recommendation of officers shall be considered at Planning Committee unless it has been submitted such reasonable period in advance of the relevant Planning Committee meeting as is agreed by the Head of Area Planning and has been the subject of a full appraisal by officers and consultation where necessary and that the minutes shall record the fact that revisions have been made to the application and the reasons for these shall be recorded in the supplementary information.
- | 3528. If the Planning Committee wishes to grant planning permission contrary to officers' recommendations the application shall be deferred to the next meeting of the Committee for further consideration. Following a resolution of "minded to grant contrary to the officers' recommendation", the Chair shall put to the meeting for approval a statement of why the officers recommendation for refusal should be overturned, which, when approved, shall then be formally recorded in the minutes. When a planning application has been deferred, following a resolution of "minded to grant contrary to the officers' recommendation", then at the subsequent meeting the responsible officer shall have the opportunity to respond both in a further written report and orally to the reasons formulated by the Committee for granting permission. If the Planning Committee is still of the same view, then it shall again consider its reasons for granting permission, and a summary of the planning reasons for that decision shall be given, which reasons shall then be formally recorded in the minutes of the meeting.
- | 3629. When the Planning Committee vote to refuse an application contrary to the recommendation of officers, the Chair shall put to the meeting for approval a statement of the planning reasons for refusal of the application, which if approved shall be entered into the minutes of that meeting. Where the reason for refusal proposed by the Chair is not approved by the meeting, or where in the Chair's view it is not then possible to formulate planning reasons for refusal, the application shall be deferred for further consideration at the next meeting of the Committee. At the next meeting of the Committee the application shall be accompanied by a further written report from officers, in which the officers shall advise on possible planning reasons for refusal and the evidence that would be available to substantiate those reasons. If the Committee is still of the same view then it shall again consider its reasons for refusing permission which shall be recorded in the minutes of the meeting.
- | 370. Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their deliberations. Members of the Planning Committee shall be respectful to the Chair and to each other and to officers and members of the public including applicants, their agents and objectors and shall not bully any person. Members of the Planning Committee should not make up their mind before hearing and considering all relevant information at the meeting and should not declare in advance of the meeting, how they intend to vote on a particular application or other matter.
- | 384. Members of the Planning Committee should not speak to members of the public (including applicants and agents) during a meeting of the Planning Committee or immediately prior to or after the meeting concerned, other than where permitted by this Code or Standing Orders.
- | 392. When questioning members of the public or the applicant who have spoken at a meeting of the Committee, members of the Planning Committee shall ensure that their questions relate only to planning matters relevant to the particular application.
- | 4033. The minutes of the Planning Committee shall record the names of those voting in favour, against or abstaining:

- (i) on any resolution of "Minded to grant or minded to refuse contrary to Officers Recommendation";
- (ii) on any approval or refusal of an application referred to a subsequent meeting following such a resolution.

4134. A member of the Planning Committee shall not vote in relation to any planning matter unless he or she has been present in the meeting of the Planning Committee throughout the consideration of that particular matter as required by Standing Orders . Any dispute as to whether the member of the Planning Committee in question should be permitted to vote shall be decided by the Chair having taken appropriate advice from legal or other officers present.

4235. Unless all members of the Planning Committee indicate that they intend to vote in accordance with the officers' recommendation on a particular item, the responsible officer shall be allowed time, at the beginning of the consideration of each application, to summarise his or her advice. If after discussion it appears that any member of the Planning Committee is minded to vote contrary to the officers' recommendation, the officer shall be allowed a further opportunity to respond to new points which have been raised, and to address the implications of a contrary decision.

Member and Officer Relations

4336. Any criticism by members of Planning Committee of officers in relation to the handling of any planning matter shall be made in writing to the Strategic Director Regeneration and Growth and not to the officer concerned. No such criticism shall be raised in public.

4437. If any officer feels or suspects that pressure is being exerted upon him or her by any member of the Council in relation to any particular planning matter, he or she shall forthwith notify the matter in writing to the Strategic Director Regeneration and Growth.

4538. Members of Planning Committee shall not attempt in any way to influence the terms of the officers' report or recommendation upon any planning matter.

Training

46 Members of the Planning Committee (and alternate members) must participate in a programme of training on the planning system and related matters agreed by and organised by officers. The programme will consist of compulsory and discretionary elements. If a Member of the Planning committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Planning Committee.

47 Members should be aware that training is particularly important for members who are new to the Planning Committee and for members who have not attended training in the recent past.

48 Where a member has a genuine difficult in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

Review of Code of Practice

50 ~~2.~~—The Director of Legal and Procurement is instructed to commission a report independent of the planning service once every two years on the operation of this Code of Practice. The report should address the extent of compliance with the Code by officers and members, contain an analysis of decisions being made against officers' recommendations and set out any appropriate recommendations for improvement. This report should be presented annually to the Standards Committee

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BS Report - APPENDIX 2

Recommendations for changes to the Member Code (Interests)

As part of my review of Brent council's Licensing and Planning codes of practice, I was asked to consider whether changes should be recommended to the Licensing and Planning codes, to reflect the Member code requirements regarding member interests or alternatively whether it is more appropriate that the changes be made to the relevant sections of the Member code of conduct.

My recommendation is that the Member code of conduct should be amended with regard to the registration and declaration of interests.

Background

In July 2012 the council adopted a new Member code of conduct requiring members to register their Disclosable Pecuniary Interests (DPIs). The 2012 Code was adopted in accordance with the law on DPI's and following government guidance on the minimum ethical framework required by the Localism Act 2011. Members were no longer required to register other (non-pecuniary) interests, for example personal interests arising from membership of trade unions, charities or lobby groups, or relating to gifts or hospitality received.

The council's 2012 code of conduct also removed the requirement on members to declare all personal interests, other than DPIs, at meetings. Members are required by the law and by the code to declare a DPI and to withdraw from discussion and voting and from the meeting during any debate on the relevant item, unless they have obtained a dispensation. Members are not specifically required by the 2012 Member code of conduct to declare a personal interest at a meeting, or to withdraw from discussion or voting on a matter because they consider they have a prejudicial interest in it.

However, the Member code does oblige members to uphold the Seven General Principles of public life, one of which is Integrity, and it follows that members are under an obligation to limit or end their participation in any council business where their participation would amount to them using their position as a member improperly to obtain an advantage. Members have also been specifically advised of the need to end participation where there is a risk of bias or the appearance of bias as a result of any personal interest.

Each council has the discretion to decide what the Member code of conduct requires of their members regarding the registration and declaration of interests other than DPIs, further to s28(2) of the Localism Act. Some principal authorities adopted minimalist codes of conduct in 2012; other principal authorities decided to keep all or some of the requirements of the 2007 national code for the registration and/or declaration of personal (non-pecuniary) interests and prejudicial interests. Failure to declare or register those additional interests does not attract criminal sanctions in the same way as a failure to register a disclosable pecuniary interest would do.

The existing Planning and Licencing Codes and the declaration of interests at committee meetings

The council's Planning Code of Practice and Licensing Code of Practice were not amended in 2012 since they were awaiting a review more generally, which would include the interface with the main Code. Both codes currently reflect the previous legal arrangements which require members of the council who participate in Licensing or Planning matters to consider if they have a personal interest in those matters, and if so to declare it; and to consider if

their personal interest is a prejudicial interest and to withdraw from the meeting if it is. (Members who have a prejudicial interest in a matter can make Licencing Act representations to the Licensing committee, and representations as a member to the Planning Committee, but only in so far as the public also have the right to do so). The Summons for meetings also includes an agenda item at the beginning of meetings requesting that members disclose Personal and Prejudicial interests.

The Licensing and Planning codes currently omit any references to Disclosable Pecuniary Interests; in practice members of Licensing and Planning committees have been appropriately legally advised at meetings and members have declared DPis whenever required.

The minutes of 2012 and 2013 Planning Committee and Licensing Committee meetings show that, as a matter of good practice, members on the relevant committees have continued to take steps to identify and declare their own personal interests. Members have also withdrawn from discussion and voting on an item when they considered or were advised that they had a prejudicial interest. The minutes show that members have erred on the side of caution and declared their membership of relevant organisations and groups at Licensing or Planning meetings.

The minutes show members sometimes consider that they have a “personal interest” simply because they have been approached by interested parties. Interviews with a selection of Planning and Licensing committee members confirmed that members find it difficult to make a distinction between interests and “approaches”, in the absence of a definition of personal interests in the code.

A change in Government Guidance

In March and September 2013 the Department for Communities and Local Government (DCLG) issued guidance on “Openness and Transparency on Personal Interests”.

The March 2013 guidance emphasised that:-

“[Members] must act in conformity with the Seven Principles of Public Life. One of these is the principle of integrity - that 'Holders of public office must avoid placing themselves under any obligation to people or organisations that might 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**” (my highlights).

The September 2013 guidance reiterated the duty to uphold the principle of integrity and advised members that:-

“your registration of personal interests should be guided by this duty and you should give the monitoring officer who is responsible for your council’s or authority’s register of members’ interests any information he or she requests in order to keep that register up to date and any other information which you consider should be entered in the register.”

“All sitting councillors need to register their declarable interests – both declarable pecuniary interests, and other interests that must be declared and registered as required by your authority’s code, or your duty to act in conformity with the Seven Principles of Public Life, such as your membership of any Trade Union.”

This guidance has evolved from the previous minimalist approach encouraged by DCLG in 2012. The new guidance recognises that, if there is to be public confidence in the decisions that councillors are taking, there needs to be openness and transparency about the full range of private and public interests (both pecuniary and non-pecuniary) that members can have which may give rise to a conflict of interest (or to the public perception that such a conflict exists).

Councils are now exhorted by DCLG to consider registration for, as a minimum, membership of trades unions on the basis that a councillor might be influenced by such membership; it follows that it is reasonable to consider obliging members to register their membership of organisations such as charities and lobby groups (which also exist to influence public policy) or where the particular relationship between a member and an individual or organisation might unduly influence that member's decisions as a councillor.

LGA Guidance – Probity in Planning 2013

The Local Government Association has issued updated guidance for members on "Probity in Planning". The April 2013 guidance advises that it is good practice for councils to maintain a register of member interests which includes both personal (non pecuniary) interests and DPs. The guidance advises that members should declare any personal interests at Planning meetings and that members should then consider whether that interest is "likely to be seen as prejudicing their impartiality or their ability to uphold the principles of public life". If it is, then the LGA advise that the member should withdraw from the meeting. The "prejudice" test that the LGA suggests is similar to the "prejudicial interest" test that applied nationally until 2012 which a number of local authorities retained in their own post-Localism member codes.

The LGA guidance on Planning probity is equally relevant to the work members that of the council undertake with regard to the Licensing function; both Planning and Licensing functions are quasi-judicial or formal regulatory functions where the public expect and require the highest levels of transparency and probity from members.

RECOMMENDATIONS

I recommend that the council's 2012 Member code of conduct be amended to include the requirement to register interests relating to a member's membership of (or position of control regarding) organisations such as political parties, lobby groups, and charities, or interests relating to gifts or hospitality above £50.

I recommend that the council's 2012 Member code of conduct be amended to include the definitions of personal and prejudicial interests, and should set out the impact of those on member conduct. This will require a member to declare personal interests, including registerable interests, at meetings; but the member will be able to remain in the meeting to speak and vote, unless the member's interest is a prejudicial interest or a Disclosable Pecuniary Interest.

The purpose of these amendments would be to give all members of the council, including members of the Planning and Licencing committees, greater clarity and certainty as to what may amount to a conflict of interest between their private and public interests when they participate in council business. If they consider they have a conflict of interest they are then better able to resolve that conflict. Where there is no conflict, they can remain and speak and vote and otherwise participate in council work. This approach is strong on transparency, but still allows for participation in the democratic process where the nature

of the interest is not so strong as to give rise to a conflict between that interest and the member's ability to judge and act in the public interest.

Belinda Shaw
March 2014

SUGGESTED AMENDMENTS TO INTERESTS SECTIONS OF BRENT COUNCIL CODE OF CONDUCT FOR MEMBERS

PART 3

Interests

Registration of Interests

9. (1) Within 28 days of this Code being adopted by the Council, or of the member's election, re-election or the co-opted member's appointment (whichever is the later), he / she shall notify the Monitoring Officer of any interests which fall within the categories specified in Appendix A (Disclosable Pecuniary Interests) or Appendix B (Personal Interests).
- (2) A member shall notify the Monitoring Officer of any change to interests or any new interests in Appendices A and B within 28 days of becoming aware of it.
- (3) The Monitoring Officer will maintain the council's register of interests and enter onto that register all interests notified to him/her.

Sensitive Interests

10. (1) A member will have a Sensitive Interest if the nature of the member's interest is such that the member and the Monitoring Officer consider that disclosure of the details of the interest could lead to the member, or a person connected with the member, being subject to violence or intimidation.
- (2) Where the member has a Sensitive Interest then the council's public register of interests will not include details of the interest, but may state that the member has an interest the details of which are withheld under this subsection
- (3) If sections 14 and 15 of this Code apply in relation to the sensitive interest those provisions are to be read as requiring you to disclose not the nature of the interest but merely the fact that you have an interest in the matter concerned.

Definition of Interests

Personal Interests

11. For the purposes of this code you have a **personal interest** in any matter to be considered or being considered by your authority where your interest is not a disclosable pecuniary interest in that matter and is either
 - (a) an interest that you are required to register under Appendix B or
 - (b) where a decision in relation to that matter might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

For the purpose of Paragraph 11 (b) a "relevant person" is

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors; or

- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in Appendix B of which such persons are members or in a position of general control or management.

Prejudicial Interests

- 12 (1) For the purposes of this code where you have a personal interest in any matter to be considered or being considered by your authority you also have a **prejudicial interest** in that matter where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment of the public interest **and** where that matter:
- (a) affects your financial position or the financial position of a person or body described in paragraph 11 above, **or**
 - (b) relates to the determining of any approval, consent, licence, permission, or registration in relation to you or any person or body described in paragraph 11 above.

A personal interest in any matter to be considered or being considered by your authority is not a prejudicial interest where that matter relates to the functions of your authority in respect of

- (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
- (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

Disclosable pecuniary interests

13. For the purposes of this code you have a disclosable pecuniary interest if it is of a description specified in regulations made by the Secretary of State as set out in Appendix A to this Code.

Disclosure of Interests and Participation in Meetings

Disclosure of personal interests

- 14 (1) Where you have a personal interest in any matter being considered by your authority and you are present at a meeting of the authority at which the matter is considered, you should declare the existence and nature of the interest before the matter is discussed or as soon as it become apparent to you, but this is subject to section 10.
- (2) Paragraph 14(1) only applies where you are aware or ought reasonably to be aware of the existence of the interest.

Disclosure of pecuniary interests and prejudicial interests and effect on participation

15. (1) Subsections (2) (3) (4) and (5) apply to you if you –
- (a) Are present at a meeting of the council or of any committee, sub-committee, joint committee or joint sub-committee, Executive or Executive subcommittee meeting,
 - (b) Have a disclosable pecuniary interest **or** a prejudicial interest in any matter to be considered, or being considered, at the meeting, and

- (c) Are aware that the condition in paragraph (b) is met.
- (2) You must disclose the existence and nature of the interest to the meeting, but this is subject to section 10.
- (3) If the interest is a disclosable pecuniary interest not yet entered in the council's register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the disclosure.
- (4) If the interest is a **disclosable pecuniary interest or a prejudicial interest** you may not
 - (a) participate, or participate further, in any discussion of the matter at the meeting, or
 - (b) participate in any vote, or further vote, taken on the matter at the meeting, (but this is subject to section XX [paragraphs in Code containing rules for granting of Dispensations])

save that you may remain in the meeting only for the purpose of making representations, answering questions or giving evidence relating to the matter, and provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. You should withdraw from the room in which the meeting is held for the duration of any discussion or vote on the matter once you have made representations, answered questions or given evidence relating to the matter.

- (5) Sub sections (6) and (7) apply if –
 - (a) a function of the Council may be discharged by a member acting alone,
 - (b) you have a disclosable pecuniary interest **or** prejudicial interest in any matter to be dealt with, or being dealt with, by you in the course of discharging that function, and
 - (c) you are aware that the condition in sub section(b) is met.
- (6) If the interest is a disclosable pecuniary interest not yet entered in the Council's register and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date when you become aware that the condition in sub section (6) (b) is met in relation to the matter.
- (7) You must not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by you).
- (8) Where you give a notification for the purposes of sub sections (3) and (6), the Monitoring Officer will enter the interest notified in the Council's register.
- (9) You will be excluded from a meeting while any discussion or vote takes place in which, as a result of the operation of sub section (4), you may not participate.
- (10) for the purpose of this section, an interest is "subject to a pending notification" if –
 - (a) under this section or section 10, the interest has been notified to the Monitoring Officer, but
 - (b) that interest has not yet been entered in the council's register in consequence of that notification.

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APPENDIX A

Disclosable Pecuniary Interests

Such interests of:

1. the member, or
2. the member's spouse or civil partner, or
3. a person with whom the member is living as husband and wife, or
4. a person with whom the member is living as if they were civil partners'

and the member is aware that that other person has the interest

Please note:

any person mentioned in 2, 3 & 4 above is known as a "relevant person"

"Member" includes co-opted member

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant

authority.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to the member's knowledge)—

(a)

the landlord is the relevant authority; and

(b)

the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—

(a)

that body (to the member's knowledge) has a place of business or land in the area of the relevant authority; and

(b)

either—

(i)

the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii)

if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

APPENDIX B

Personal Interests

Any interest which relates to or is likely to affect:

1) any body of which the member is in a position of general control or management, and to which he / she is appointed or nominated by the Council.

2) any body:

a) exercising functions of a public nature;

b) directed to charitable purposes; or

c) whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which the member of the Council is a member or in a position of general control or management;

3) any gifts or hospitality worth more than an estimated value of £50 which the member has received by virtue of his / her office.

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