



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.

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