

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.

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