

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 and 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.

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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

2417. 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).

2518. 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

2619. ~~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.~~

281. 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 difficulty 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