

PLANNING CODE OF PRACTICE : INDEPENDENT ANNUAL REVIEW

June 2002 to May 2003

1.0 Introduction

1.1 A revised Planning Code of Practice was agreed by Full Council and the Standards Committee and came into operation from 23rd May 2002. A copy of the Planning Code is attached as **Appendix A** (this was subsequently slightly revised on 19th May 2003, as explained in paragraph 5.0 below).

1.2 Included in the Code is provision for the Borough Solicitor to annually commission a report, independent of the planning service, on the operation of the Code. The report addresses the extent to which there is Code compliance by officers and Members, an analysis of decisions being made against officers' recommendations and any appropriate recommendations for improvement.

2.0 Recommendations from last year's review

2.1 The review of the period May 2001 to April 2002, including recommendations, reported to the Standards Committee on 14th January 2003. As a result of discussions at the Standards Committee, the Borough Solicitor reported back on the issues raised by the review, addressing them as follows:

2.2 Whether or not a record should be maintained of training that Members had received and how this could be achieved.

2.2.1 This discussion stemmed from the recommendation "In order to address the specific need to have all appropriate Members trained further training sessions should be scheduled for remaining Committee Members and their alternates. Training records should be held centrally and conform with IIP (Investors in People) requirements."

2.2.2 Training is ongoing and covers 3 aspects: updates on legislation, the Planning Code and planning implementation. The Planning Code of Practice could be strengthened to make attendance at training courses compulsory however, Members would probably not agree to this. The recommendation is aimed at ensuring that every Member who should be trained, is trained and that this information is readily available to assist the planning of future training events.

2.2.3 The Council has now set up a Member development programme supported by the Mayor's Office and Member Development Manager. This will assist the Council gaining Corporate IIP accreditation. Discussions have already begun with HR representatives, to establish the standard of record-keeping required to gain IIP status. Thus, even though current initiatives around the Member Development Programme will not include retrospective training records, it is anticipated that a system will be in place this year.

2.3 Whether there should be further safeguards to prevent pressure by Members on officers outside meetings

2.3.1 This discussion arose through the recommendation, from last year's review, that further safeguards to prevent potential pressure being exerted on officers by Members, outside of meetings, should be put in place, in the form of strengthening of paragraphs 33 and 34.

2.3.2 The Borough Solicitor considered that there are adequate safeguards in place to prevent undue pressure being exerted on officers. The Planning Code of Practice has a paragraph (32) which prevents public criticism of Officers and the Protocol for Member Officer relations states at 6.4 that Members should not coerce officers to send particular correspondence or to write or refrain from writing a particular statement. Furthermore, under the Brent Members Code of Conduct, Members must treat others with respect and must not in their official capacity use their position improperly to confer an advantage:

Members and officers should at all times treat each other with respect and courtesy. It is essential for the operation of the Council that there is a close working relationship, built on mutual respect, between Members and officers

2.3.3 Bullying and coercion of staff would be liable to sanction by the Standards Board or Standards Committee.

2.4 Whether approaches to Members by applicants, or objectors, should be reported in all instances to the Director of Environment

2.4.1 This issue was prompted by the recommendation that the Code should contain a reminder that approaches made to Members by applicants, agents or interested parties should be recorded in the Register maintained by the Director of Environment.

2.4.2 Insofar as contact by applicants etc is concerned, paragraph 4 of the Planning Code of Practice covers this eventuality. Such approaches do not have to be reported to the Director of Environment.

2.4.3 Paragraph 12 of the Code requires the Director of Environment to maintain a register of contact made by applicants, agents or interested parties with individual Members of the Council on each and every planning application. However, there is not an obligation on Members not on Committee to report such contact to the Director of Environment. The register exists presumably to allow Members to report contact if they so desire.

2.4.4 Having considered the matter, it would be unduly burdensome on Members, who are not Members of Planning Committee, to be required to report each and every contact that was made to them by applicants, particularly if applicants are asking for advice on such matters as whether or not they can construct extensions to their houses etc. There are sufficient safeguards within the Code in that Members of Planning Committee must report to the Committee any approach that has been made to them and, of course, that would include alternates. The Code should contain a requirement that Members of Planning Committee report such approaches to the Director of Environment as well as to Committee although it appears that most do so as a matter of course. Thus, the Code has now been changed (paragraph 12) to reflect this as follows:

“The Director of Environment 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 4 and other Members of the Council may record such approaches if they feel it is appropriate.”

2.5 Whether Members have to give a weeks notice of a request for a site visit.

2.5.1 This discussion point arose through consideration of the call-in procedure at Standards Committee. The Planning Code of Practice, paragraph 11 was intended to enable Members to give advance notification of request to make a site visit before the Committee sat. It is accepted procedure that any Member on the Planning Committee, prior to the application being debated can request a site visit. That request is then voted on by the Committee and a site visit is either agreed or rejected. It is not intended to limit a Member’s power to request a site visit. Thus, the code has been revised to include the statement in paragraph 11:

“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.”

2.6 There was a recommendation, in last year's review, that all Planning Committee Members should be encouraged to attend the Committee pre-meeting and that a record of attendance be maintained. The Borough Solicitor advised that, as the pre-meeting was to organise the business of the committee and was not a forum for decision making, it would be inappropriate to keep a record of attendance in this way. However, Standards Committee resolved to encourage attendance by having the Director of Planning write to all Planning Committee Members to reinforce this recommendation as well as maintaining a record of attendance.

2.7 A recommendation from last year's review stated that the Planning Service should examine, review and improve the Members call-in procedure to ensure that the requirements of paragraph 10 are met. The Planning Service undertook to review the operation of their procedure to ensure that it was always complied with. This was done and the results from this year's survey can be seen in paragraph 6.3.12.

3.0 Current Status

3.1 There is a monitoring group process in place to assist the implementation of changes to the operation of the Planning Code. The Group consists of the Director of Environment, The Head of Licensing, The Planning Manager and the Corporate Complaints Officer. The group meets twice a year and is due to meet next in December 2003.

3.2 There have been no complaints to the Monitoring Officer. There have been no complaints to the Standards Board.

3.3 During the last 12 months there have been no complaints to the Ombudsman regarding any allegations of significant nor minor breaches of the Code.

4.0 The Review

4.1 Human Resources and Diversity were commissioned to undertake the review, liaising with the Planning Service, Legal Services and Democratic Services officers.

4.2 Questionnaires were sent to Councillors who were Members of the Planning Committee during the review period. Five completed questionnaires were returned out of ten sent. In addition, former Committee Chair, Councillor Fox, gave his views in an interview.

5.0 Changes & Improvements introduced during 2002/2003 concerning the operation of the Code

5.1 The Planning Code was updated in May 2003 to incorporate changes identified in the previous review year. The updated Code is now in use and forms part of the new Constitution. The new constitution has been published and is available on the intranet. Also, Members have recently received updates for their conduct handbooks.

5.2 The changes are in italicised text below:

Paragraph 4. If an approach is made to a Member of the Planning Committee from an applicant or agent or other interested party in relation to a particular planning application or any matter which may give rise to a planning application, the Member 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 Director of Environment under paragraph 12 below.*

Paragraph 11. If any Member of the Council wishes to 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, they shall provide the following details at least one week 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.

Paragraph 12. The Director of Environment 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 4 and other Members of the Council may record such approaches if they feel it is appropriate.*

6.0 Compliance with the Planning Code of Practice

6.1 The Code comprises thirty four paragraphs, each of which has been analysed, as a part of this Review. Paragraphs reproduced below have been abbreviated. The full version of each paragraph can be found in Appendix A:

6.2 General

6.2.1 Paragraphs 1-2 (Council's Policies)

Paragraph 1 Members of the Planning Committee shall determine applications in accordance with the Unitary Development Plan unless material considerations indicate otherwise. The Brent Members Code of Conduct must be complied with throughout the decision making process. Decisions should not be influenced by personal or prejudicial interests of Councillors

6.2.2 All Members and planning officers have been supplied with copies or have access, via the intranet to a copy of the Planning Code of Practice and the Members Code of Conduct as part of the current Constitution.

6.3 Accountability and Interests

6.3.1 Paragraph 4b) - *If an approach is made to a Member of the Planning Committee from an applicant or agent or other interested party in relation to a particular planning application, the Member shall disclose the fact and nature of such an approach at any meeting of the Planning Committee where the planning application is considered*

Paragraph 7 - *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 he/she has been in contact with the applicant, agent or interested party if this be the case.*

6.3.2 There were fifteen occasions where disclosures of approaches to Members of the Planning Committee by an interested party were made. In nine of these cases, the Member withdrew from discussion and voting on the application even though this action need only apply if the relationship between the Member and the interested party could be construed as being a prejudicial interest. It would appear that many Members are declaring a personal interest (as covered by Paragraph 8 (i)) in the application by virtue of having only been approached by an interested party (e.g. an objector). Such an approach does not preclude a Member from discussing the application in Committee; it only requires that the approach has been disclosed.

6.3.3 There were thirty four occasions where non-Planning Committee Members spoke at Committee meetings. In all cases, the minutes recorded reasons for them wishing to speak and whether they had been in contact with the applicant or other interested parties. There was, however, a slight

inconsistency in the way in which the minutes were worded. The minutes should precede the reporting of the non-Member wishing to speak with the words "in accordance with the Code of Practice". There were nineteen occasions (of the thirty four referred to above) where this did not occur. Thus, Democratic Services should consider applying this consistency of reporting to all minutes of the Planning Committee.

6.3.4 Paragraph 3 - *Members should not take part in any discussion of, or vote on, any item if the Member or his or her relative, friend or associate is the applicant agent or objector.*

Paragraph 8 *When the circumstances of any elected Member are such that they have*

(i) a personal interest in any planning application or other matter, then the Member, if present, shall declare a personal interest at any meeting where the particular application or other matter is considered, and if the interest is also a prejudicial interest shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the application or other matter.

6.3.5 There were thirty recorded instances of Members declaring personal interests at Committee meetings. It is not possible to compare the declarations directly with the previous year as the nature of interests to be declared changed from "pecuniary" and "non-pecuniary" to "personal" and "prejudicial". In all there were 56 occasions when pecuniary and non pecuniary interests were declared in the previous year. Most, but not all, were declared at the start of the meeting in accordance with the standard agenda item. Other declarations were made during the meetings indicating that not all Committee Members are able to become familiar with all details of all applications prior to their consideration at Committee. In the minutes, some declarations were accompanied with an explanation as to the "nature" of the interest as required by the Members Code of Conduct. These included such declarations as: "knows the objector", "knows the applicant", "has had correspondence from objectors" "applicant lives next door to brother", "has expressed opinions in the past which could be construed as prejudicial."

6.3.6 On eighteen occasions (of thirty) where personal interests were declared, the Member withdrew from discussion and voting. However, it is not a requirement that such a withdrawal should occur upon the declaration of a personal interest and indicates that not all Members may be aware of this or were being overly cautious.

6.3.7 There were eight declarations of what could be construed as "prejudicial" interests in that the Member knew either the applicant or the objector(s). In all cases, the Member withdrew from discussion and did not vote, in accordance with the Paragraph above. An interest that could be described as prejudicial, in this context, is described as "*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 the Member's judgement of the public interest.” (Source: Brent Members Code of Conduct Paragraph 10 (1)).

6.3.8 There is a certain amount of ambiguity about how this paragraph 8 (i) is treated in meetings and how the minutes reflect what is actually declared. Members should be able to state what their interest is and then be guided as to whether it is a personal or prejudicial interest, and act accordingly, in line with the guidance in the Code i.e. personal interests need to be declared; prejudicial interests need to be declared accompanied by withdrawal from discussion and voting.

6.3.9 Similarly, the description of such declarations should be reported consistently in the minutes. Below are four examples, from the Committee minutes, where declarations have been made that could be due to either Paragraph 4 b) Disclosure of an approach, or Paragraphs 3 and 8 (i), a personal/prejudicial interest.

a) 18th September 2002

REF	SITE ADDRESS	CLLR	NATURE OF INTEREST
02/1155	65-69 Pound Lane, Willesden, NW10	Cllr Jones	Personal Interest Councillor Jones clarified the nature of her interests as follows; she had had contact with objectors and the applicant.

Outcome: Cllr Jones declared a personal interest and did not take part in the voting of this application.

b) 12th November 2002

REF	SITE ADDRESS	CLLR	NATURE OF INTEREST
1/01	32/34 Woodcock Hill Kenton, Harrow	Cllr. Steel	Approached by applicant, Mr. Bhudia, and objectors. He stated at this stage that he would be speaking on behalf of the objectors as he supported their views, adding that he would vote against the application

Outcome: Cllr Steel declared an interest and although took part in the discussion did not vote on this application.

c) 4th December 2002

REF	SITE ADDRESS	CLLR	NATURE OF INTEREST
02/1184	Connect 2020, St Michael's Rd,	Cllr J Long	Personal Interest; has been approached by objectors

	Cricklewood, NW2	And Cllr Sayers	Personal Interest; has received correspondence from objectors
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Outcome: Cllr J Long declared a personal interest (had been approached by objectors) and did not take part in the voting of this application. Cllr Sayers declared a personal interest in this application (had received correspondence from objectors) but took part in discussion and voted.

d) 15th January 2003

REF	SITE ADDRESS	CLLR	NATURE OF INTEREST
02/2174	17 Brampton Grove, Wembley HA9 9QX	Cllrs Kansagra again & O'Sullivan	personal interest; have been approached by objectors

Outcome: Cllr Kansagra declared a personal interest in this application and voted. Cllr O'Sullivan declared a personal interest in this application and did not take part in the voting.

6.3.10 An approach by an interested party will not normally result in a personal or prejudicial interest. A clarification of this could assist the Committee process by removing that element of caution that Members appear to be using when withdrawing from discussion and voting.

6.3.11 **Paragraph 8 (ii)** *where a Member has a prejudicial interest in a planning application or other matter, 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.*

Paragraphs 10 I) and 10 ii) *Where under the provisions of the Constitution two Members of the Council ask for an application or other matter to be decided by Committee rather than by Officers, their names shall be included in the Committee Report. Each Member shall be asked separately for and the Report shall include:*

- (i) *A reason why the application or other matter should not be dealt with under delegated powers;*
- (ii) *Whether or not they have been approached concerning the application or other matter and if so, by whom*

6.3.12 There were three cases (compared with six, last year) where Members requested that applications be decided by Committee rather than via officer delegation. In all three cases the conditions at (i) and (ii) above were met. For the two cases which were subsequently heard by Committee, the Committee report included all the required details. The Committee agreed with the officer recommendations. This indicates that this procedure has been reviewed and improved since the audit of 2001/02 was completed.

6.3.13 Paragraphs 5 and 6 - Membership of the Committee, business interests and support for the Council's planning policy

Paragraph 20 *When the Membership of 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*

6.3.14 There were three wards where all three councillors were Members of, or alternates for, the Planning Committee. In two of those wards, one Councillor would have been an alternate for one of the other ward councillors. However, in the Queensbury ward, a situation could have arisen where the three ward councillors Dromey, RS Patel and Kabir, could have served together at a Planning Committee meeting; Kabir as a Planning Committee Member, Dromey as an alternate for Singh and RS Patel as an alternate for Long.

6.3.15 Paragraph 21. *Any pre-meetings which may be held prior to the Planning Committee meetings shall be open to all Members (and alternates) of the Planning Committee. These meetings can help to speed up decision making by giving officers notice of additional information Members may require at the meeting.*

6.3.16 There is a pre-meeting for every Planning Committee meeting, commencing at 6.15 pm. The intention is to deal with the order of business and decide which matters should be brought forward because of there being people wishing to speak or because some matters have generated a large number of spectators, cover some of the finer detail of some of the applications to be considered and to bring to Members' attention to any new or supplementary information which may have a bearing on the outcome of the Committee discussion. In turn, this is intended to save time in the Committee meeting itself.

6.3.17 In May 2003, the Director of Planning, Chris Walker, wrote to all Planning Committee Members and alternates to urge attendance at the pre-meeting and to dispel the implication that it is a forum for decision-making or for rehearsing discussions.

6.3.18 A record of attendance is now being maintained, in accordance with the recommendations from the previous audit and the Standards Committee meeting of 14th January 2003, however there is still an issue of attendance at this pre-meeting. The pre-meeting is generally attended only by Labour Members of the Planning Committee. This appears to defeat the object of bringing all Members up to date with the applications being considered. In addition, it adds to a suspicion that the true purpose of the pre-meeting is to decide, in advance of the Committee meeting, whether planning applications should be approved or refused, according to officers recommendations. With this suspicion in mind, Members may be actively avoiding pre-meeting

attendance so as not to be seen as colluding with political opposition. In addition, views have been expressed that the meeting start time is too early to allow attendance by all Members.

6.3.19 Clearly, there are some doubts as to the validity of the pre-meeting and the current situation should be jointly reviewed by Democratic Services, Legal Services, and the Planning Service, via the monitoring group, along with representation from the political groups.

6.3.20 **Paragraph 12** - *The Director of Environment 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.*

6.3.21 There are two registers kept by the Director of Environment. The first is the Notification from Members of Approaches Relating to Planning Applications and is for Members of the Planning Committee. There are fifteen entries relating to fifteen different applications during the review year. Most of the entries are concerned with progress updates, presumably at the request of an interested party. All fifteen entries were generated by five Committee Members.

6.3.22 The second is a register of contact for non-committee Members. There are sixty-one entries in this register relating to forty five applications. Fifteen councillors have entries in the register, with one councillor having thirty eight entries in total.

6.3.23 The current version of the code (2003/04) states that the Director of Environment shall maintain a register;

“ ...in which Members of the Planning Committee *must* record approaches referred to in paragraph 4 and other Members of the Council *may* record such approaches if they feel it is appropriate.”
(auditors italics)

6.3.24 This change reduces the burden on non-Committee Members by allowing them discretion as to whether they inform the Director of Environment of approaches made.

6.4 Officer Conduct.

6.4.1 **Paragraphs 13,14,15** *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, then that officer shall declare a prejudicial interest in the public register held by the Director of Environment and take no part.*

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.

In relation to all matters not already governed by paragraphs 13 and 14 above, all such officers shall comply with the Royal Town Planning Institute Practice Advice

6.4.2 There were two entries in the public register as follows:

a) A declaration by the Area Planning Manager with regard to an application on a property adjoining that of a relative which was in the process of being sold. The Officer also raised an objection to the application.

Outcome: An alternative Planning Manager was assigned. The officer was then restricted to having no part in decision process, to make representations in writing only and not to discuss with fellow members of staff. The application was subsequently withdrawn.

b) A member of the Planning Team was required to submit an application for a certificate of lawfulness for an extension on their own property and enquired of the process.

Outcome: The applicant was advised not to approach any one except Team Manager/Head of Planning regarding progress.

6.4.3 There was also one entry in the hospitality book for the Planning Section relating to a small gift to the Local Land Charges section from a member of the public.

6.5 Site Visits

6.5.1 Paragraph 11 *If any Member of the Council requests a Site Visit, prior to the debate at Planning Committee, their name shall be recorded. They shall provide and a record kept of:*

- (i) their reason for the request;*
- (ii) whether or not they have been approached concerning the application or other matter 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

6.5.2 This paragraph has been complied with. However, during the last year, clarification has been sought regarding the notice period. As a result the paragraph has now been amended to clarify the notice period required, details required and the context of the site visit in relation to the relevant Committee meeting. Please see Paragraph 11 in the Code attached at appendix A.

6.5.3 Paragraphs 16,17,18,19

16. *The purpose of a site visit conducted by Members and Council officers is to gain information and assist Members in matters relating to the context of the application and the characteristics of the surrounding area. Members should avoid expressing opinions on site visits to any person present.*

17. *Members of Planning Committee shall not enter any premises which are the subject of a planning application to meet the agent, applicant or other interested party, save in the course of a formal accompanied site visit.*

18. *On site visits applicants or other interested parties shall only be permitted to point out to Members 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.*

19. *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.*

6.5.4 All above paragraphs were complied with during the review period.

6.6 Meetings of the Planning Committee

6.6.1 **Paragraph 23:** *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 at least fourteen clear days before the relevant Planning Committee meeting, and has been the subject of a full appraisal by officers.*

6.6.2 As far as this could be identified, this was complied with where there was any "material" revision.

6.6.3 **Paragraph 26:** *Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their deliberations. Members 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*

6.6.4 An analysis of voting patterns shows that voting has been across party lines, most of the time. The majority of votes are unanimous. Where voting has not been unanimous then, in around 50% of these cases there was a tendency for opposition Members to vote together against Labour Members.

In a response to the questionnaire completed as a part of this audit, one Member commented as follows:

“There is a persistent tendency to vote to a whip when it is not needed. Members are not all honestly making a personal judgement”

6.6.5 Whilst this doesn't prove that political considerations take precedence over individual committee Members' views of each application, there is enough of a trend to suggest that Committee Members should be strongly reminded that they should vote according to their personal judgement, after having taken into account all relevant considerations.

6.6.6 Paragraphs 27 and 28

27 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.

28 When questioning Members of the public or the applicant who have spoken at a meeting of the Committee, Members shall ensure that their questions relate only to planning matters relevant to the particular application.

6.6.7 Whilst it is not easy to check compliance, as far as could be established, these paragraphs were complied with during the year. For both paragraphs, an understanding of Planning Committee procedures, on the part of Members of public, is implied. Approaches for improving this understanding are explored in more detail in paragraph 8 below.

6.6.8 Paragraphs 29,30,31

29 The Minutes of the Planning Committee shall record the names of those voting in favour, against or abstaining:

30. A Member 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.

31 Unless all Members of the Planning Committee indicate that they intend to vote in accordance with the officers' recommendation the officer shall be allowed time, to summarise his or her advice.

6.6.9 Evidence from the Committee minutes suggest that all these areas of the Code are being complied with.

6.6.10 Paragraph 31

Officer allowed further opportunity to respond during consideration of the application.

6.6.11 This area of the Code has been complied with.

6.7 Planning decisions made contrary to officers recommendations

6.7.1 **Paragraph 24** *If the Planning Committee wishes to grant planning permission contrary to officers' recommendation the application shall be deferred to the next meeting of the Committee for further consideration.*

6.7.2 There were no such instances in the review year.

6.7.3 **Paragraph 25** *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 the application shall be deferred for further consideration at the next meeting of the Committee.*

6.7.4 There were four instances where the Planning Committee voted contrary to officers recommendations. In all cases it was to refuse permission. In three of the four cases, a statement of the planning reasons for refusal was approved at the same meeting. In the other case, a statement was agreed at a subsequent meeting in accordance with paragraph 25 of the Code.

6.7.5 Whilst, in percentage terms, this result represents an increase on the previous two years, there is no reason to suppose that there has been a change in attitude, generally, towards officer recommendations. An analysis of any appeals against these decisions will reveal whether those decisions were ill-founded or not. At the time of writing, appeals have been raised in three of the four cases. One appeal has overturned the decision of the Committee and, therefore, has granted permission. The two other appeals are awaiting a hearing date.

Please see Appendix B for details

6.7.6 Analysis of applications voted contrary to officers recommendations

<u>Year</u>	<u>Cases Voted contrary to officer recc.</u>	<u>Cases to committee</u>	<u>Total Applications</u>	<u>Contrary vote % of total Applications</u>	<u>Contrary vote % of committee Cases</u>
2002/03	4	124	3386	0.12%	3.22%
2001/02	3	301	2781	0.11%	1.0%
2000/01	6	394	2644	0.23%	1.5%

1999/00	10	304	2310	0.43%	3.3%
1998/99	18	458	2259	0.80%	3.9%
1997/98	11	362	2420	0.45%	3.0%
1996/97	19	395	1880	1.01%	4.8%

6.8 Member & Officer Relations

6.8.1 Paragraphs 32,33 & 34:

Notification of criticism of officers, or pressure exerted on officers by any Member.

6.8.2 It is considered that there are adequate safeguards in place to prevent undue pressure being exerted on officers. Please see paragraph 2.3.2 for further details.

7.0 Feedback from Members

7.1 Five Members completed questionnaires as a part of this review. All were of the opinion that the Code had been adhered to, by officers and Members, most of the time. All respondents commented on the support that the Code gives them. However, there were some issues raised in relation to the use of the code:

7.2 There are concerns that political considerations play a part in voting and that not all Members are making an honest personal judgement. This is covered by the Planning Code of Practice (para 26): "Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their deliberations".

7.3 The Code could be used to improve the service by allowing greater discretion in authorising planning applications.

7.4 Non-Committee Members seem unaware of the code, when speaking at Committee.

8.0 Committee Meetings

8.1 During this Review, the subject of Planning Committee meetings was regularly raised in relation to the operation of the Code. In particular, the theme of process clarity emerged.

8.2 It is clear that seasoned Committee Members understand the procedures in place, and, for the most part, adhere to them. However, Members of the public and non-Committee councillors who attend are not always so well briefed as they could be.

8.3 For example, if a non-Committee Member wishes to speak at the meeting, it is not always made clear why they should declare any contact that they have had with objectors/supporters. In turn, this can look, to a Member of the public attending for the first time, unreasonable and undemocratic.

8.4 Similarly, if a Committee Member has declared an interest in the application (either at the start of the meeting or, subsequently, during the meeting) and has to leave the room during the debate.

8.5 Also, it is sometimes difficult for Members of the Committee to explain to members of the public, during a break in proceedings, for example, that they are unable to discuss applications with them, outside of the Committee meeting. Again, this can look unhelpful to an objector to an application, especially if the Member is also the Ward Councillor.

8.6 It is accepted that, within the Committee report, extracts from the Code are reproduced by way of explanation, however, not all those in attendance have access to this.

8.7 It should be clear from the outset of the meeting that the Committee Chair is responsible for addressing breaches (or alleged breaches) of the code, during the meeting, having taken on-hand advice from Legal Services as necessary.

8.8 The public address system used in Committee could be improved. Members of the public, particularly towards the rear of the room, have had difficulties in hearing what is being said. This, in turn, can lead to clarification being sought and further explanation, either from the Chair or an officer, being necessary, thus lengthening proceedings.

8.9 Suggestions for improving the clarity of proceedings, for the benefit of Members of the public and non-committee Members include:

8.9.1 A lay person's guide to Planning Committee proceedings emphasising elements of the code which will be used in the meeting. Written in bullet point format avoiding the use of "legalese". Ideally, this should be in a leaflet form and placed on each seat in the area for public attendance. (Currently under development by Democratic Services)

8.9.2 An explanation, by the Chair, of the meeting process emphasising:

- Speaking rights of Members of the public and Councillors
- How declarations of personal or prejudicial interests play a part
- The need to refrain from approaching committee Members to discuss applications. The requirement for Committee Members to have not made their mind up on how to vote in advance of the debate
- The voting procedure and the use of a casting vote
- The need to restrict debate only to planning considerations

- The frequency and timing of breaks in the proceedings
- How the public is expected to behave

8.9.3 A public display board, outside the meeting room, indicating expected behaviours, key elements of the code, a running order and an anticipated finish time.

8.9.4 A monitor, for use by the Chair, for the “traffic light” speakers timer to ensure that time limits are adhered to. The existing monitor is visible to the speaker but not the Chair.

8.9.5 Research into an alternative public address system, if possible eliminating the requirement for hand held microphones, which is capable of ensuring that everyone can hear proceedings clearly.

8.9.6 In addition, a discussion group consisting of the Committee chair, Democratic Services, Planning and Legal Services, should be established to generate further improvement ideas and to monitor the effectiveness of implementation. This group could form an extension of the existing monitoring group for the Code of Practice.

9.0 Recommendations

9.1 The definitions for both Personal and Prejudicial interests at committee meetings should be clarified, especially with regard to declaration of approaches by interested parties. Within the meeting itself, such declarations should be accurately categorised by the minute taker and the minutes should reflect this categorisation. For the benefit of Committee Members, clarification should be addressed within the Member Development Programme (Paragraphs 6.3.3 and 6.3.5 to 10)

9.2 Political groups should be reminded that, when appointing alternates, care should be taken to ensure that all wards will contain a councillor who is not a Member of the Planning Committee. (Paragaraph 6.3.14)

9.3 There should be a review of the use of, and effectiveness of, Committee pre-meetings due to current attendance patterns. The review should be jointly managed by Democratic Services, Legal Services, the Planning Service and political group representatives. (Paragraph 6.3.19)

9.4 Committee Members should be strongly reminded that, when voting on application approval/refusal, personal judgements should be used, not political judgements. (Paragraph 6.6.5)

9.5 Further improvements to the clarity of the committee meeting process should be considered. This will enable Members of the public and non-committee Members in attendance to understand and have confidence in the decision-making process. (Paragraph 8.9)

10.0 Acknowledgements

The author would like to record his appreciation for the assistance given in the compilation of this report by members of staff and councillors.

Tim Baker
For HR and Consultancy Services

Date: September 2003

APPENDIX A

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 Local Government Act 2000. The purpose of the Code is to provide more detailed guidance on the standards to be applied specifically in relation to planning matters. 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 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 developers and objectors and is intended to ensure that the integrity of the decision-making process is preserved.

General

1. Members of the Planning Committee shall determine applications in accordance with the Unitary Development Plan unless material considerations indicate otherwise. The Brent Members Code of Conduct and the law relating to Members' personal and prejudicial interests must be complied with throughout the decision making process. Decisions should not be influenced by personal or prejudicial interests of Councillors or because of undue pressure exerted by applicants, agents or third parties. This Code sets out further rules applicable to the planning process in Brent.

Review of Code of Practice

2. The Borough Solicitor is instructed to commission a report independent of the planning service annually 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. Members should not take part in any discussion of, or vote on, any item if the Member or his or her relative, friend or associate is the applicant agent or objector for that matter.
4. If an approach is made to a Member of the Planning Committee from an applicant or agent or other interested party in relation to a particular planning application or any matter which may give rise to a planning application, the Member shall:

- a) 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;
 - b) 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
5. Members 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.
 6. Members 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.
 7. 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 he/she has been in contact with the applicant, agent or interested party if this be the case.
 8. When the circumstances of any elected Member are such that they have
 - (i) a personal interest in any planning application or other matter, then the Member, if present, shall declare a personal interest at any meeting where the particular application or other matter is considered, and if the interest is also a prejudicial interest shall withdraw from the room where the meeting is being held and not take part in the discussion or vote on the application or other matter.
 - (ii) where a Member has a prejudicial interest in a planning application or other matter, 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 the purposes of this Code, in determining whether a Member has a prejudicial interest, the exceptions in paragraph 10 (a), (b) and (c) of the Members Code of Conduct will not apply.

9. For the avoidance of doubt, where a Member 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 paragraph 8 above.
10. Where under the provisions of the Constitution two Members of the Council ask for an application or other matter to be decided by Committee rather than by Officers, their names shall be included in the Committee Report. Each Member shall be asked separately for and the Report shall include:
 - (i) A reason why the application or other matter should not be dealt with under delegated powers;
 - (ii) Whether or not they have been approached concerning the application or other matter and if so, by whom.

Unless both Members have provided these 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.

11. If any Member of the Council requests a Site Visit, prior to the debate at Planning Committee, their name shall be recorded. They shall provide and a record kept of:
 - (i) their reason for the request;
 - (ii) whether or not they have been approached concerning the application or other matter 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.

12. The Director of Environment 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.
13. 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 Director of Environment and take no part. 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.
14. 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.
15. In relation to all matters not already governed by paragraphs 13 and 14 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.

Site Visits by Members with Officers

16. The purpose of a site visit conducted by Members and Council officers 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 in matters relating to the context of the application or other matter in relation to the characteristics of the surrounding area. Members should avoid expressing opinions on site visits to any person present.
17. 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 (for instance where a Member is unable to attend the site visit), any visit made shall be accompanied by a planning officer.

18. On site visits applicants or other interested parties shall only be permitted to point out to Members 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.
19. 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.

Membership and Jurisdiction of the Planning Committee

20. When the Membership of 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.
21. Any pre-meetings which may be held prior to the Planning Committee meetings shall be open to all Members (and alternates) of the Planning Committee. These meetings can help to speed up decision making by giving officers notice of additional information Members may require at the meeting.
22. All Members of Planning Committee, and in particular the Chair, shall be informed from time to time about the relevant provisions of the Local Government (Access to Information) Act 1985 and in the event of any dispute between Members and officers as to the application of the 1985 Act, the advice of the Borough Solicitor or his or her representative shall be obtained forthwith.

Meetings of the Planning Committee

23. 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 at least fourteen clear days before the relevant Planning Committee meeting, and has been the subject of a full appraisal by officers.
24. If the Planning Committee wishes to grant planning permission contrary to officers' recommendation 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.
25. 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.

26. Members of the Planning Committee shall refrain from personal abuse and party political considerations shall play no part in their 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. Members 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
27. 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.
28. When questioning Members of the public or the applicant who have spoken at a meeting of the Committee, Members shall ensure that their questions relate only to planning matters relevant to the particular application.
29. 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.
30. A Member 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. Any dispute as to whether the Member in question should be permitted to vote shall be decided by the Chair having taken appropriate advice from legal or other officers present.
31. 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 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

32. 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 Director of Environment and not to the officer concerned. No such criticism shall be raised in public.
33. 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 Director of Environment.
34. Members of Planning Committee shall not attempt in any way to influence the terms of the officers' report or recommendation upon any planning matter.

APPENDIX B

Planning applications voted contrary to officer recommendations 6th June 2002 to 1st May 2003

Date	Application	Reason
27/06/02	<p>01/2529</p> <p>Vacant land rear of : 15-31 Sonia Gardens, Neasden, NW10</p> <p>Erection of 2 x 3-bedroom dwellinghouses</p>	<p>Officers Recommendation Approval</p> <p>Decision Refusal</p> <p>Reasons (Determined on 18th July 2002)</p> <p>1) The proposal would be contrary to the sequential approach to housing land set out in PP3 and to policy H11 of the Brent Unitary Development Plan, Replacement 2000 – 2010, Revised Deposit Version in that they involve the development of greenfield site.</p> <p>2) The height, bulk and location of the dwelling proposed would adversely affect the amenities of adjoining residential occupiers by reason of obtrusive appearance and loss of privacy through overlooking from the proposed dormer windows, contrary to policies E1, E3 and H6 of the Brent Unitary Development Plan 1996 and policy BE9 of the Brent Unitary Development Plan, Replacement 2000 – 2010, Revised Deposit Version and to Supplementary Planning Guidance (SPG) 17 section 3.4</p> <p>Voting For: Cllrs Fox and J Long</p> <p>Against Cllrs Freeson, Hughes, Jones, Kabir, Kansagra, Sayers, Singh and Steel</p> <p>NOTE:- The applicant has appealed against this decision. A date has not yet been set for the appeal to be heard</p>

Date	Application	Reason
18/07/02	02/0794 17 St Gabriel's Road, Cricklewood, NW2 4DS Erection of a detached single storey rear garden workshop	Officers Recommendation Approval Decision Refusal Reason the proposed development is not consistent with the preservation or enhancement of the area, and is therefore contrary to policy BE24 of the replacement UDP. Voting Members voted unanimously to refuse the application NOTE:- The applicant appealed against this decision and, as a result, planning permission was granted.

Date	Application	Reason
15/01/03	02/2174 17 Brampton Grove, Wembley, HA9 9QX Part single-storey and part two-storey side and rear extension to dwellinghouse	Officers Recommendation Approval Decision Refusal Reason The application does not comply with the revised Design Guidance for the Conservation Area and would lead to an appearance of overdevelopment with an adverse impact on the character of the area and the amenities of the attached property. Voting For: Cllr Fox Against: Cllrs Freeson, Jones, Kansagra, J Long & Sengupta Abstention: Cllr Crane NOTE: 1) Cllr Kansagra declared a personal interest in this application. Cllr O'Sullivan declared a personal interest in this application and did not take part in the voting

		2) The applicant has appealed against this decision. A date has not yet been set for the appeal to be heard
01/05/03	02/3187 Malvern Road, NW6 Closure of footpath, relocation of fencing, erection of fencing and gates and alterations to road, all on Malvern Road (as revised by plans received on 21/03/03)	<p>Officers Recommendation Approval</p> <p>Decision Refusal</p> <p>Reason That without detailed evidence to support the proposals, closure of the footpath would lead to an unacceptable loss of public access.</p> <p>Voting Members voted unanimously to refuse the application</p> <p>NOTE: 1) Note: Councillor Steel was not present throughout the consideration of this application and was therefore not eligible to vote</p> <p>2) No appeal against this decision has been made</p>