

SUMMONS ITEM 7

LONDON BOROUGH OF BRENT

Meeting of the Full Council
29th November 2004

Report from Borough Solicitor

For action/information

Wards affected:
ALL

Report Title: Proposed Revisions to Brent's Constitution

1.0 Summary

- 1.1 This report sets out proposed changes to the Constitution as a result of the work of the Constitution Monitoring Group. This report also recommends amendments to the Constitution as a consequence of the Licensing Act 2003.

2.0 Recommendations

2.1 Members are asked to:

- (a) agree amendments to Standing Orders (Part 3 of the Constitution) relating to the development of proposals for the budget and capital programme ('the budget process') set out in **Appendix A**;
- (b) note amendments to Standing Orders and Part 5 of the Constitution (shown at **Appendices A, B and C**) to reflect the new licensing arrangements already considered by Full Council and to be considered by the new Alcohol and Entertainment Licensing Committee;
- (c) agree amendments to the Planning Code of Practice as shown at **Appendix D**.
- (d) agree that the Monitoring Officer should be appointed as the 'qualified person' for the purposes of considering exemptions under the Freedom of Information Act;
- (e) agree the further changes recommended to be made to the Constitution as shown in the various appendices.

3.0 Detail

3.1 Amendments to the Constitution will be dealt with in this report in four distinct areas, namely:

- Amendments relating to the budget process;
- Additions and amendments relating to the new licensing arrangements;
- Amendments relating to the Planning Code of Practice;
- Amendments required by the Freedom of Information Act; and
- Further miscellaneous amendments recommended to be made

Budget Process

3.2 The arrangements around the budget process have been in place for two years now and it has become increasingly clear that the timetable for the budget does not fit with a “first reading” debate and subsequent separate meetings of both Overview and the Performance and Finance Select Committee (“PFSC”).

3.3 The first reading debate undertaken at Full Council has been deemed to be useful as it allows individual members to make suggestions which the Executive have time to consider. It is proposed to retain this part of the process.

3.4 The current process also requires the Overview Committee to then consider a “draft” budget after the first reading debate but before the Council agrees the budget in February/March. However, the timetable is such that when the report is submitted to Overview a few weeks after the first reading debate there is no or little change in the information that Members have before them that was not already available at the First Reading Debate. In particular the Committee will not have the final local government settlement and nor will it have the Executive’s actual budget proposals to consider. In many ways the meeting of Overview merely foreshadows the budget meeting of the PFSC (which is held later on in the process) where a similar exercise is undertaken but this time with far more information than was available at either the First Reading Debate or the Overview meeting.

3.5 It is therefore recommended that the process is streamlined by merging the roles of Overview and Scrutiny so that there is just one joint meeting of those committees at the optimal time in the calendar to best scrutinise and influence the preparation for the budget i.e. after the Executive has produced its draft budget proposals. The Chair of the joint meeting should be the Chair of Scrutiny with the Chair of the Overview Committee taking up the position of Vice Chair.

3.6 The change to the process is set out in **Appendix A** but can be best illustrated by the following two tables. The first table refers to the current process and the second table illustrates the changes proposed to the current process by means of tracked changes. Dates have also been added to the second table for a fuller explanation:

Table 1: Current Process

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Standing Order	Forum	Process
SO 25(a)	Full Council	First Reading Debate to consider the financial position of the Council. This will be set out in a report presented by the Executive but prepared by the Director of Finance.
SO 25(b) and (c)	Overview Committee	Consider record of debate and provide further comments to the Executive within 3 weeks.
SO 25(d)	Executive	Consider views expressed at Full Council and feedback from Overview Committee and then agree budget proposals. Submit proposals to Performance and Finance Select Committee for consideration and to Full Council at the same time
	Performance and Finance Select Committee	Consider Executive budget proposals and formulate comments to be considered by Full Council
SO 35(a)	Special meeting of Full Council	Considers report from Leader containing the Executive's budget proposals as agreed above. Report to include comments on the views expressed by the Overview Committee. Chair of Overview allowed 10 mins to present findings of Overview Committee.

Table 2: Proposed new budget process and timetable, with changes shown as tracked on current process

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Standing Order	Forum	Process
SO 25(a) <u>29th November 2004</u>	Full Council	First Reading Debate to consider the financial position of the Council. This will be set out in a report presented by the Executive but prepared by the Director of Finance.
SO 25(d) <u>14th February 2005</u>	Executive	Consider views expressed at Full Council and then agree budget proposals. Submit proposals to <u>joint meeting of the Overview Committee and Scrutiny</u>

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		<u>Committee.</u>
<u>22nd February 2005</u>	<u>Joint meeting of Overview Committee and Scrutiny Committee.</u>	Consider Executive budget proposals and formulate comments to be considered by Full Council. <u>Meeting to be chaired by Chair of Scrutiny Committee.</u>
SO 35(a) <u>28th February 2005</u>	Special meeting of Full Council	Considers report from Leader containing the Executive's budget proposals <u>and</u> the views expressed by the Overview Committee <u>and the Scrutiny Committee.</u> Chair of <u>the Scrutiny Committee</u> allowed 10 mins to present findings of <u>the joint meeting of the Scrutiny Committee and the Overview Committee.</u>

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- 3.7 These proposed changes were considered and agreed by the Constitution Monitoring Group on 14 October 2004.

Establishment of the Alcohol & Entertainment Licensing Committee and Sub-Committees

- 3.8 The report to Full Council on the new Licensing Arrangements sets out in detail the requirement that each licensing authority must appoint a Committee consisting of at least 10 and no more than 15 members to discharge its functions under the Licensing Act 2003 ('the Act'). The report also sets out that the new Committee may then establish sub-committees of 3 members and delegate its functions to both those sub-committees and to officers.
- 3.9 Upon Full Council establishing a new Alcohol & Entertainment Licensing Committee and appointing members to that committee and following the first meeting of that new committee to establish sub-committees and appoint members to it, Full Council are asked to note amendments to the Constitution required to be made to reflect the decisions already taken by Full Council and to be made by the new committee. These are shown in **Appendix A, B and C.**
- 3.10 One of the existing Licensing sub-committees will remain in order to deal with matters not falling under the Licensing Act 2003. The committee will continue to hear entertainment licenses where necessary during the transitional period.

Amendment to the Planning Code of Practice

- 3.11 Under the Brent Member Code of Conduct, a member who has an interest in a matter discussed at a meeting of the Council must declare that interest and, if that interest is a prejudicial interest, withdraw from the room. This is set out specifically in paragraph 12(1) of the Code of Conduct. Amendments to the Planning Code of Conduct (set out at **Appendix D**) clarify that this provision extends to all members whether or not they are attending this meeting in their private capacity. This amendment follows the decision of the Court of Appeal in the case of *Richardson v North Yorkshire County Council 2003* where it was decided that any councillor with a prejudicial interest in a matter should declare that interest and withdraw from the meeting room forthwith whether or not they were a member of the committee deciding the matter and whether or not their rights as an ordinary member of the public might then be detrimentally affected.

Freedom of Information Act

- 3.12 The Freedom of Information Act 2000 comes into force on 1st January 2005. Among the various exemptions is one which permits public authorities to refuse to disclose information which would prejudice the effective conduct of public affairs. Section 36 exempts the provision of information if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, inhibit (i) the free and frank provision of advice (ii) the free and frank exchange of views for the purposes of deliberation or (iii) would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of public affairs. Neither the duty to confirm or deny, nor the duty to provide the information, would apply when the qualified person so decides. The Act does not set out who the qualified person should be or what the necessary qualifications should be. However, the Information Commissioner has advised that in respect of local authorities the qualified person should be either the Chief Executive or the Monitoring Officer. Legal Services has carried out an informal survey of various local authorities. Of the thirty five who responded, twenty two were planning to delegate this function to their Monitoring Officer and ten their Chief Executive. In respect of Brent it is proposed that the 'qualified person' be the Monitoring Officer.

Further miscellaneous amendments

- 3.13 Further minor amendments are recommended to be made to the Constitution. These are shown in throughout the various appendices attached to this report.
- 3.14 In particular, Standing Order 67, 'Time and duration of meetings of Committees and Sub-Committees', is amended by adding the Standards Committee to the list of committees that can disapply the guillotine e.g. if they are in the middle of a hearing, and by deleting the reference to tenant appeals (since there are no tenant appeals dealt with by members).

4. Financial Implications

4.1 There are no financial implications arising directly from this report.

5. Legal Implications

5.1 Section 37(1) of the Local Government Act 2000 requires the Council to operate Executive arrangements and to prepare and keep up to date a document known as the "Constitution".

5.2 The budget process is left largely to the authority to determine although it must include a dispute resolution process which can be found in Standing Orders. No amendments to this process are recommended.

5.3 Following the introduction of the Licensing Act 2003, it is necessary to update the Constitution to include references to the new functions and how these functions will be exercised. The Constitution needs to be amended to reflect the changes already agreed by Full Council. These changes are shown in the appendices for noting.

5.4 Other legal implications are addressed in the body of the report.

6. Diversity Implications

6.1 There are no diversity implications arising directly from this report.

7. Staffing/Accommodation Implications

7.1 There are no staffing / accommodation implications arising directly from this report.

Background Papers

None

Contact Officers

Helen Keep on extension 1386

Terry Osborne
Borough Solicitor

Appendix A

* ONLY PAGES FROM THE CONSTITUTION WITH RECOMMENDED AMENDMENTS ARE SET OUT BELOW

25. Developing proposals for the budget and capital programme

- (a) In the case of the Council's annual budget, including the capital programme, the Executive shall present a report to Full Council setting out the financial position of the Council, financial forecasts for the following year and expenditure priorities. There shall then be a debate on the issues raised in that report held in accordance with Standing Order 45 hereinafter called a "First Reading Debate".
- (b) Following the First Reading Debate a record of the debate shall be sent by the Democratic Services Manager to the Leader of the Council and the Chairs of the Overview Committee and the Scrutiny Committee all of whom may wish to undertake appropriate consultation with others.
- (c) The Executive shall take into account the issues raised at the First Reading Debate prior to agreeing its budget proposals which proposals shall be submitted to the Overview Committee and the Scrutiny Committee for consideration.
- (d) A joint meeting of the Scrutiny Committee and the Overview Committee shall be convened in order to afford them an opportunity to consider the Executive's budget proposals
- (e) A special meeting of Full Council shall be convened in accordance with Standing Orders for the purpose of agreeing the Council's budget and setting the Council Tax.
- (f) Where, before 8th February in any financial year (but not otherwise), the Executive submits to Full Council for its consideration in relation to the following financial year:
- (i) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of sections 32 to 36 or 43 to 47 of the Local Government Finance Act 1992;
 - (ii) estimates of other amounts to be used for the purposes of such a calculation; or
 - (iii) estimates of such a calculation
- (other than those required in accordance with section 52I, 52J, 52T or 52U of the Local Government Finance Act 1992) and following consideration of those estimates or amounts Full Council has any objections to them it must then comply with the following paragraphs of this Standing Order.

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Deleted: During the period specified in (b) above the Overview Committee will consider the report presented to Full Council under paragraph (a) and shall undertake any consultation it considers appropriate and shall report back to the Executive with its response.

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(g) Subject to (e) above, before Full Council makes any calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph (e)(i), it must inform the Leader of any objections which it has to the Executive's estimates or amounts and must give the Leader instructions requiring the Executive to reconsider, in the light of those objections, those estimates and amounts in accordance with Full Council's requirements.

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(h) Where Full Council gives instructions in accordance with paragraph (f), it must specify a period of at least five days beginning on the day after the date on which the Leader receives the instructions on behalf of the Executive within which the Leader may:-

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- (i) submit a revision of the estimates or amounts as amended by the Executive ("revised estimates or amounts"), which have been reconsidered in accordance with Full Council's requirements, with the Executive's reasons for any amendments made to the estimates or amounts, to Full Council for Full Council's consideration; or
- (ii) inform Full Council of any disagreement that the Executive has with any of Full Council's objections and the Executive's reasons for any such disagreement.

(i) When the period specified by Full Council, referred to in paragraph (g) above has expired Full Council must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph (e)(i), take into account:-

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- (i) any amendments to the estimates or amounts that are included in any revised estimates or amounts;
- (ii) the Executive's reasons for those amendments;
- (iii) any disagreement that the Executive has with any of Full Council's objections; and
- (iv) the Executive's reasons for that disagreement

which the Leader submitted to Full Council, or informed Full Council of, within the period specified.

(i) In the event that there is a dispute between the Executive and Full Council on all or any part of the Capital Programme which cannot be resolved at the relevant meeting, Full Council shall instruct the Executive to reconsider their proposal in accordance with paragraphs (i) and (j) of Standing Order 26 below.

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35. Council Tax Setting

- (a) A Special Meeting of Full Council shall be held each year on a day not later than 10th March or such later date as may be allowed by statute to set the level of Council Tax for the following Council Tax year and to deal with associated budgetary matters.
- (b) The Leader shall present a report to the meeting setting out the Executive's proposals for the budget.
- (c) Following presentation of the report by the Leader, the Chair of the Scrutiny Committee shall be allowed up to 10 minutes to present the findings of the joint meeting of the Scrutiny Committee and the Overview Committee following which there shall be a general debate and a vote taken.

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54. Appointments to Council Committees and Sub-Committees

- (a) Full Council may appoint such Council committees as it is required or permitted to appoint, such committees to be set out in Part 5 of the Constitution, together with their terms of reference and the number of members to be appointed.
- (b) Chairs and Vice Chairs of the Overview Committee and the Scrutiny Committee shall be appointed by the members of those committees except as prescribed by Standing Order 19(d). In all other cases, Full Council shall, appoint a Chair for each of the Council Committees and if it so wishes a Vice Chair.
- (c) Full Council may at any time dissolve a committee or remove any of its members or change the size of its membership.
- (d) Other than in the case of the Alcohol & Entertainment Licensing Committee Full Council shall determine the extent to which any functions may be exercised by any sub-committee and the terms of reference will be set out in Part 5 of the Constitution. The Alcohol & Entertainment Licensing Committee will determine the extent to which any functions may be exercised by any Sub Committees established by it and will agree its terms of reference.
- (d) Appointment of the Council's sub-committees and agreeing the number of members to be appointed shall be by the parent committee and the Chair and (if considered necessary) Vice Chair of the sub-committees shall be appointed by the parent committee.
- (e) No member may be appointed to any committee or sub-committee so as to hold office later than the next Annual Meeting or until the Special Meeting of Full Council which meets after the next Annual meeting to agree appointment to committees except as set out in standing order 55(b) below.
- (f) Co-opted members may be appointed to committees and sub-committees in accordance with the rules for membership for committees and sub-committees contained in Part 5 of the Constitution.

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60. Quorum of Committees and Sub-Committees

Other than in the case of the Alcohol & Entertainment Licensing Sub Committees,
no business shall be transacted at a meeting of a committee or sub-committee
unless at least one quarter of the whole number of its members, or three
members, whichever is greater, are present. In respect of the Alcohol &
Entertainment Licensing Sub-Committees at least two members of the relevant
sub-committee must be present before business can be transacted at that
meeting. After a meeting has commenced if at any time it becomes inquorate no
further business shall be transacted and the meeting shall stand adjourned.

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61. Speaking Rights of Members of the Public.

- (a) This Standing Order shall not apply to meetings of the Planning Committee ~~or the Alcohol & Entertainment Licensing Sub-Committees.~~
- (b) Except as set out in this Standing Order or Standing Orders 69 (e)(ii) (Petitions) and 70 (Deputations) no member of the public shall be permitted to speak at a meeting of a committee or sub-committee of the Council unless invited by the Chair of the meeting to do so who shall specify the period allocated to the member of the public to speak which shall usually be up to 2 minutes except in special circumstances in which case up to 3 minutes shall be permitted.
- (c) Except in the case of a person representing a deputation under Standing Order 69, any member of the public who wishes to address a meeting of a committee or sub-committee concerning an item of business on the agenda for the meeting in question shall give notice to the Democratic Services Manager or his or her representative prior to the commencement of the meeting of their wish to address the committee. Normally such notice shall be given at least 24 hours before the commencement of the meeting and the Democratic Services Manager shall keep a record of the order of receipt of such notices. Where a person indicating s/he wishes to address the committee has not given such a notice the Chair shall decide whether s/he shall be permitted to speak.
- (d) Where more than one person wishes to speak on the same item of business under paragraph (b) the Chair shall have the discretion to limit the number of speakers and in so doing will take into account the order in which notices of a wish to speak were received by the Democratic Services Manager.
- (e) Where a report from or concerning a relevant Consultative Forum is before the Scrutiny Committee or Overview Committee or a sub-committee thereof and the Chair or any other representative of the Forum is present at the meeting and that person has given notice to the Democratic Services Manager prior to the commencement of the meeting of their wish to address the meeting on that item of business that person shall be entitled to address the committee or sub-committee for not more than 3 minutes (unless a longer period is permitted by the Chair) on that item of business. Normally such notice shall be given at least 24 hours before the commencement of the meeting and the Democratic Services Manager shall keep a record of the order of receipt of such notices. Where the Chair or any other representative of the Forum has not given such a notice but wishes to address the committee or sub-committee, the Chair shall decide whether s/he shall be permitted to speak which shall be for not more than 3 minutes unless a longer period is permitted by the Chair.

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64. Requirement to Attend Entire Meeting

- (a) No member shall be entitled to take part in or vote at a meeting of the Senior Staff Appointments Sub-Committee, the Schools Disciplinary Sub-Committee or the Staff Appeals Sub-Committees unless the member is present for the entire meeting.
- (b) No member shall be entitled to vote on any item being considered by the Planning Committee unless the member is present for the entire discussion of that item.
- (c) No member of the Standards Committee shall be entitled to take part in or vote on any item relating to the conduct of individual members of the Council unless the member is present for the entire discussion of that item.
- (d) No member shall be entitled to take part in or vote on any item being considered by the General Purposes Licensing Sub-Committee or the Alcohol and Entertainment Licensing Sub-Committees unless the member is present for the entire item.

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67. Time and duration of meetings of Committees and Sub-Committees

- (a) Subject to paragraph (b) below, the time specified on the summons for commencement of a committee or sub-committee meeting shall not be later than 10.15pm unless the Chair is satisfied on reasonable grounds that:-
 - (i) each item of business to be transacted at that committee or sub-committee meeting should be dealt with as a matter of exceptional urgency; and
 - (ii) the meeting cannot be called to commence at an earlier hour without undue inconvenience.
- (b) The summons for a committee or sub-committee meeting may specify that the meeting will commence at the time specified on the summons or upon the rising of another meeting of the Council, committee or sub-committee, if later.
- (c) Subject to paragraphs (d) and (e) below, transaction of business at every committee or sub-committee meeting shall end no later than 10.30pm provided that if at 10.30pm there is business not yet dealt with which the committee or sub-committee considers would be more conveniently dealt with on that day rather than on a subsequent day, the meeting may continue until not later than 11.00pm in accordance with the following procedure (which shall be known as “the guillotine procedure”):-
 - (i) the meeting shall identify those items of business to be transacted;
 - (ii) unless the meeting decides otherwise, the items of business so identified will be taken in the order determined by the last procedural resolution establishing the order of business, or, in the absence of such a procedural resolution, in the order set out in the agenda accompanying the summons for the meeting;
 - (iii) members will be permitted to ask questions of officers but will not be allowed to make speeches unless the meeting decides otherwise.
- (d) The Planning Committee, the Alcohol & Entertainment Licensing Sub-Committees, the General Purposes Licensing Sub Committee and the Standards Committee may by majority vote taken no later than 10.30 pm, decide to:-
 - (i) fix such time as they may choose for the transaction of business to end provided that no business shall be transacted later than midnight; and/or
 - (ii) disapply the guillotine procedure entirely or fix such later time as they may choose for that procedure to commence.
- (e) Paragraph (c) above shall not apply to:- (i) meetings of the Senior Staff Appointment Sub-Committee, the Staff Appeals Sub-Committees, or Schools Disciplinary Sub-Committee; and
- (iii) any meeting of a committee called to determine the size and political balance or membership of one or more of its sub-committees or to remove or appoint the Chair or Vice Chair of such a sub-committee.
- (f) Any items not dealt with at the time a meeting closes shall be considered at the next meeting of the same committee or sub-committee or at such earlier meeting of that committee or sub-committee as the Chair shall determine.

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Deleted: (ii) any meeting dealing with an appeal by a Council tenant or an applicant for or holder of a licence or registration which the Council is empowered to grant or revoke; and¶

- (g) Where a meeting is adjourned to a subsequent day to transact remaining business, the committee or sub-committee shall, notwithstanding that adjournment, have power to deal with the business in question at any earlier meeting on the summons or agenda for which the relevant business is specified.

68. Minutes of Committees and of Sub-Committees

- (a) Minutes of committee and sub-committee meetings shall be prepared in two parts:-
 - (i) Part I containing minutes of decisions taken by the committee or sub-committee under powers delegated to it by Full Council; and
 - (ii) Part II containing minutes of recommendations made by the committee or sub-committee to a committee or Full Council.
- (b) The recommendations of each committee or sub-committee meeting as may be contained in Part II of its minutes shall be submitted to the next Ordinary Meeting of the relevant committee or Full Council (as the case may be) together with a supporting report.
- (c) Minutes of each committee or sub-committee meeting shall be put before the next ordinary meeting of that committee or sub-committee for approval as a correct record. No discussion shall take place upon the minutes except as to their accuracy and as soon as they are approved as a correct record the Chair shall sign them.
- (d) Minutes of each sub-committee meeting shall be submitted to the next ordinary meeting of the relevant parent committee for information.
- (e) Under "Matters Arising from the Minutes" members may seek information on the current position but no motion to vary or rescind the minutes nor any other motion may be permitted.

(f) Minutes taken at hearings of the Alcohol & Entertainment Licensing Committee and Sub Committees must be kept for 6 years from the date of the Sub Committees determination or, where an appeal is brought against the determination of the authority, the disposal of the appeal if later.

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70. Deputations

- (a) With the exception of the Standards Committee, the General Purposes Licensing Sub-Committee, the Alcohol & Entertainment Licensing Sub-Committees and the Planning Committee the first 20 minutes of every Council committee or sub-committee meeting (or such shorter time as is required) shall be allocated to receive deputations under this rule which shall be permitted where the following are met:
- (i) the committee or sub-committee has voted by a simple majority to receive such deputation;
 - (ii) the subject of the deputation is one which is on the agenda of the meeting concerned; and
 - (iii) notice of the deputation has been given to the Democratic Services Manager or his or her representative at least 24 hours before the start of the relevant meeting.
- (b) In respect of each deputation received, one person representing the deputation will be entitled to address the meeting for up to 5 minutes.

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Appendix B

ALCOHOL AND ENTERTAINMENT LICENSING COMMITTEE

Membership

- The Committee is comprised of 15 members

Terms of Reference

1. To oversee the discharge of all licensing functions of the Council as the licensing authority under the Licensing Act 2003, except the determination of the Council's Statement of Licensing Policy and the publication of that Statement.
2. To establish and appoint to sub-committees to determine matters regarding personal licences, premises licences, club premises certificates, provisional statements, variation of the designated premises supervisor, interim authorities, police objections to temporary event notices and any applications requiring a hearing under the Licensing Act 2003.
3. To arrange for the discharge of the functions governed by the Licensing Act 2003 by its sub-committees or by officers except where prohibited by the Licensing Act 2003.
4. To receive and consider annual reports, where appropriate, on the needs of the local tourist economy, employment and investment in the area and any other matter directly related to the licensing functions in the borough.
5. To direct officers to report to the Planning Committee, where appropriate, on the situation regarding licensed premises in the area, including the general impact of alcohol related crime and disorder.

Appendix C

Alcohol and Entertainment Licensing Sub-Committee 'A' / 'B' / 'C'

Membership

- Each sub-committee is comprised of 3 members drawn from the Alcohol and Entertainment Licensing Committee.
- Alternate members shall also be drawn from the Alcohol and Entertainment Licensing Committee.

Terms of Reference

1. To determine applications for personal licences where the police have served an objection notice.
2. To determine applications for premises licences, club premises certificates and provisional statements where a relevant representation is made.
3. To determine applications to vary premises licences and club premises certificates where a relevant representation is made.
4. To determine applications to vary a designated premises supervisor where a police objection is received.
5. To determine applications for transfer of a premises licences where a police objection is received.
6. To determine applications to review premises licences and club premises certificates.
7. To determine applications for interim authorities where a police objection is received.
8. To determine a police objection to a temporary event notice.
9. To determine any application or variation which is capable of being determined by officers but which the Director of Environment considers appropriate for the Sub-Committee to consider.

Appendix D

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 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.

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 Brent Council 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 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.
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

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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 Director of Environment under paragraph 12 below.
5. 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.
 6. 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.
 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.

(a) When the circumstances of any member of the Council are such that they have 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.

(b) If a member of the Council has a prejudicial interest in a planning application 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 consideration and nor shall he/she exercise his/her right to request a site visit.

(c) For the purposes of this Code, in determining whether a member of the Planning Committee has a prejudicial interest, the exceptions in paragraphs 10(2)(a), (b) and (c) of the Members Code of Conduct will not apply.
 9. 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 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 request shall state:

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- (i) the reason(s) 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 proceed to be determined by officers in accordance with their delegated powers.

11. Save as provided by paragraph 8 (b) above, 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:

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- (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.

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.
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 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.

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Site Visits by Members of the Planning Committee with Officers

16. 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.
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 of the Planning Committee 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 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.
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. 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.
21. 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.
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 of the Planning Committee 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.

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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.

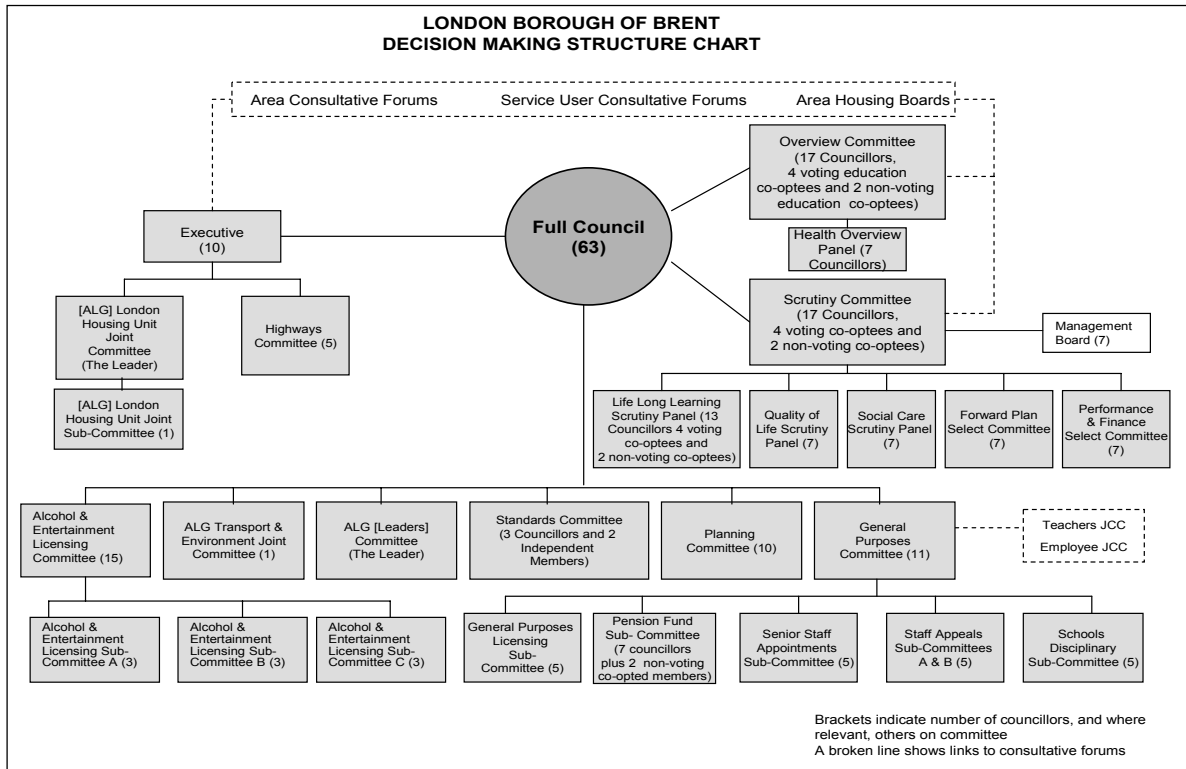
24. If the Planning Committee wishes to grant planning permission contrary to officers' recommendations the application shall be deferred to the next meeting of the Committee for further consideration. Following a resolution of "minded to grant contrary to the officers' recommendation", the Chair shall 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.
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 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. 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.
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 of the Planning Committee 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 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. 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.
 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 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

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.

Part 1 INTRODUCTION



Article 8 – Regulatory and Other Committees

Other Committees and Sub-Committees

8.1 As well as the Overview Committee and the Scrutiny Committee, the Council has appointed the following committees:

- Standards Committee
- General Purposes Committee
- Planning Committee
- Alcohol and Entertainment Licensing Committee

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8.2 The General Purposes Committee has appointed the following sub-committees:

- Senior Appointments Sub-Committee
- Schools Disciplinary Sub-Committee
- Staff Appeals Sub-Committee A & B
- General Purposes Licensing Sub-Committee
- Pension Fund Sub-Committee

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8.3 The Alcohol and Entertainment Licensing Committee has appointed 3 Sub-Committees known as the Alcohol and Entertainment Licensing Sub-Committees A, B and C.

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Terms of Reference

8.4The terms of reference for these committees and sub-committees are contained in Part 5 of this Constitution. This also sets out information about the quorum for meetings and the membership.

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Part 4 RESPONSIBILITY FOR FUNCTIONS

1.9 Part 5 of the Constitution describes the membership and terms of reference for the Council committees and sub-committees. These are:-

- Standards Committee
- Overview Committee
- Health Overview Panel
- Scrutiny Committee
- Forward Plan Select Committee
- Performance and Finance Select Committee
- Life Long Learning Scrutiny Panel
- Quality of Life Scrutiny Panel
- Social Care Scrutiny Panel
- General Purposes Committee
- Pension Fund Sub-Committee
- Senior Staff Appointments Sub-Committee
- Staff Appeals Sub-Committees A and B
- Schools Disciplinary Sub-Committee
- Planning Committee
- General Purposes Licensing Sub-Committee
- Alcohol and Entertainment Licensing Committee
- Alcohol and Entertainment Licensing Sub-Committees A, B and C

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1.10 In addition to the powers described in the Tables as being specifically delegated to officers, any other Council and Executive functions are delegated to officers in accordance with paragraph 2, 'Powers Delegated to Officers'.

1.11 Table 5 sets out the 'proper officers' designated for the purposes of certain statutory provisions. Any reference in any Act or any part of this Constitution to 'the proper officer' will be a reference to the person so specified in the Table but if none is specified the Chief Executive or a person nominated by him or her for the purpose. Any other function not otherwise specified in the Tables or elsewhere in this Constitution is the responsibility of the Executive, unless specifically precluded by law from so being, in which case it shall be the responsibility of the General Purposes Committee (unless specifically reserved to Full Council in which case it shall be exercised by Full Council).

1.12 All functions shall be exercised in accordance with this Constitution including, for the avoidance of doubt, the Standing Orders and Financial Regulations and this Part 4 and Part 5.

1.13 In exercising any function or making any decision the decision making body or person shall take into account all relevant considerations and ignore all irrelevant considerations and shall comply with the Access to Information Rules.

1.14 A number of joint committees have been established with other London Boroughs under the umbrella of the Association of London Government. The Housing Committee exercises executive functions as does its Sub-Committee. The ALG Committee and the Transport and Environment

Committee exercise executive and non-executive functions. The terms of reference and make up of these committees and the sub-committee are described in Part 5.

<p>B. Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)</p>		<p>Except where specified all of the functions listed under this section B will be exercised by the Director of Environment or a person nominated or authorised by him or her, except those functions which are the responsibility of the General Purposes Licensing Sub-Committee, or are required to be determined by the Full Council</p>
<p>1. Power to issue licences authorising the use of land as a caravan site ("site licences").</p>	<p>Section 3(3) of the Caravan Sites and Control of Development Act 1960.</p>	
<p>2. Power to license the use of moveable wellings and camping sites.</p>	<p>Section 269(1) of the Public Health Act 1936.</p>	
<p>3. Power to license hackney carriages and private hire vehicles.</p>	<p>(a) as to hackney carriages, the Town Police Clauses Act 1847, as extended by section 171 of the Public Health Act 1875, and section 15 of the Transport Act 1985; and sections 47, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976;</p> <p>(b) as to private hire vehicles, sections 48, 57, 58, 60 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.</p>	<p>N/A</p>
<p>4. Power to license drivers of hackney carriages and private hire vehicles.</p>	<p>Sections 51, 53, 54, 59, 61 and 79 of the Local Government (Miscellaneous Provisions) Act 1976.</p>	<p>N/A</p>

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Part 5 TERMS OF REFERENCE FOR COUNCIL COMMITTEES AND SUB-COMMITTEE

MEMBERSHIP AND TERMS OF REFERENCE OF COUNCIL COMMITTEES AND SUB-COMMITTEES

Introduction

1. The Council has determined that functions of the Council may be discharged by the committees and sub-committees set out below.

Council committees

2. The Council has appointed the following committees:-
 - Standards Committee
 - Overview Committee
 - Scrutiny Committee
 - General Purposes Committee
 - Planning Committee
 - Alcohol and Entertainment Licensing Committee

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Council Sub-Committees

3. The General Purposes Committee has appointed the following sub-committees:
 - Senior Staff Appointments Sub-Committee
 - Schools Disciplinary Sub-Committee
 - Staff Appeals Sub-Committee A and B
 - General Purposes Licensing Sub Committees
 - Pension Fund Sub-Committee

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Alcohol and Entertainment Licensing Committee

- 3A. The Alcohol and Entertainment Licensing Committee has appointed 3 Sub-Committees known as the Alcohol and Entertainment Licensing Committee A, B and C.

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Overview and Scrutiny Sub-Committees

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4. The Overview Committee has appointed a sub-committee called the Health Overview Panel. The Scrutiny Committee has appointed five sub-committees called:
 - Forward Plan Select Committee
 - Performance and Finance Select Committee

- Life Long Learning Scrutiny Panel
- Quality of Life Scrutiny Panel
- Social Care Scrutiny Panel

5. The Scrutiny Panels will scrutinise the decisions or actions of the Executive or the Council or any part of them in relation to the functions or services specified in their terms of reference and will carry out the Scrutiny Panel functions in respect of the functions or services specified in those Terms of Reference. The Scrutiny Panel Functions are:

- to contribute to the development of an annual work programme for approval by the Scrutiny Committee;
- to implement their annual work programmes once approved including the carrying out of any time limited, in-depth reviews of a function or service as set out in the annual work programme;
- to undertake in depth monitoring of a function or service;
- to call before the panel a member of the Executive or any Service Area or Corporate Director to respond to specific issues of concern on any matter it is considering;
- to consider any representation, petition or deputation referred to it;
- to consider any report or outcome of any review or inspection relating to function or service;
- to monitor the implementation of any action plans arising from any such review or inspection;
- to request reports on specific issues of concern;
- to consider any issues arising from a consultative forum or other consultation exercises;
- to establish Task Groups.

6. Any dispute as to whether a matter does or does not fall within the remit of a particular sub-committee shall be resolved by the Chair of the Management Board on advice from the Borough Solicitor.

Task Groups

7. The Overview and Scrutiny Panels and the Performance and Finance Select Committee may, having taken account of any recommendations from the Management Board, establish task groups.

Call in

8. The Forward Plan Select Committee or, in the case of call ins relating to education matters, the Life Long Learning Scrutiny Panel will consider any decisions called in for scrutiny under Standing Order 21.

Political Balance

9. The rules on political balance will apply to all committees and sub-committees except the Standards Committee.

Quorum

10. The quorum for all committees and sub-committees is one quarter of the number of the members on that committee or sub-committee (including voting co-opted members) or 3, whichever is the greater. In the case of the Standards Committee, the quorum must include an Independent Member and in the case of the Senior Staff Appointments Sub-Committee it must include a member of the Executive. In the case of the Alcohol and Entertainment Licensing Sub-Committees, the quorum must be at least two members.

Chair

11. In the case of the Overview Committee and the Scrutiny Committee, the Chair and Vice Chair will be elected by the members of the committee at the first meeting of the committee following the Annual Meeting (if a political balance review takes place at that meeting) or the special meeting under Standing Order 36 and again whenever there is a vacancy or (in the case of the Chair) if the Chair or Vice Chair are not present. Unless Standing Order 19(d)(i) or 19(d)(ii) applies, the Chair of the Scrutiny Committee shall not be a member of the majority group and in the case of the Scrutiny Committee and any of its sub-committees the vice chair shall not be from the same political group as the chair of the committee or sub-committee as the case may be.
12. In the case of all other committees the Chair and Vice Chair shall be appointed by Full Council.
13. In the case of sub-committees the Chair and Vice Chair shall be appointed by the parent committee.
14. In the case of the Standards Committee, the Chair shall be one of the Independent Members and shall be appointed by Full Council.

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Terms of Reference and Membership

15. The terms of reference and membership of the committees and any special rules relating to membership or chairing the meeting are set out below.

Joint Committees

16. A number of joint committees have been established with other London Boroughs under the umbrella of the Association of London Government ("ALG"). The Housing Joint Committee exercises Executive functions as does its sub-committee. The ALG and the Transport and Environment Committee exercise executive and non-executive functions. The terms of reference and make up of these committees and sub-committee are described below (even though some of the functions are executive functions).

GENERAL PURPOSES LICENSING SUB-COMMITTEE

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Membership

The sub-committee is comprised of 5 councillors.

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Terms of Reference

1. To hear and determine applications under licensing legislation other than the Licensing Act 2003 once the Act or the relevant parts of it are in force which are considered significantly contentious by the Director of Environment or in respect of which an applicant is entitled to be heard by a committee or sub-committee of members.
2. To consider and determine any other licensing matter where considered appropriate by the Director of Environment.

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