



Full Council
29th October 2007

Report from the Borough Solicitor

Wards Affected:
ALL

Changes to the Planning Code of Practice, Licensing Code of Practice and the Protocol on Members' Rights of Access to Information

1.0 Summary

- 1.1 This report discusses the changes that are required to be made to the Planning Code of Practice, the Licensing Code of Practice and the Protocol on Members Rights of Access to Information as a result of the adoption of the new Code of Conduct by the Council.

2.0 Recommendations

- 2.1 Note that the Standards Committee considered the Planning Code of Practice, the Licensing Code of Practice and the Protocol on Members Rights of Access to Information on 15 October 2007 and recommended to the Council to adopt the changes to the set out in this report.
- 2.2 Adopt the changes to the changes to the Planning Code of Practice, the Licensing Code of Practice and the Protocol on Members Rights of Access to Information set out in the appendices to this report.

3.0 Detail

Background

- 3.1 The Planning Code of Practice, the Licensing Code of Practice and the Protocol on Members Rights of Access to Information are formal Codes adopted by the Council in Part 7 of the Constitution. The Codes of Practice

are additional to the Brent Member Code of Conduct and provide specific guidance to members and officers of the Council relating to planning and licensing matters and inform the public generally of the standards adopted by the Council in the exercise of its planning or licensing powers. The Protocol on Members Rights of Access to Information provides guidance to members and officers on the rights of access to information that members have.

- 3.2 Members will recall that the Council adopted the new Brent Member Code of Conduct on 10th September 2007. Those parts of the Planning and Licensing Codes of Practice and the Protocol on Members Rights of Access to Information that reflect the Brent Member Code of Conduct need to be amended to reflect the changes made to the Code of Conduct so that all the documents are consistent with each other.
- A copy of the new Brent Member Code of Conduct is attached as **Appendix 1**.
 - A copy of the Planning Code of Practice with the recommended changes highlighted as tracked changes is attached as **Appendix 2**.
 - A copy of the Licensing Code of Practice with the recommended changes highlighted as tracked changes is attached as **Appendix 3**.
 - A copy of the Protocol on Members Rights of Access to Information with the recommended changes highlighted as tracked changes is attached as **Appendix 4**.

Treating Others With respect

- 3.3 The new Brent Member Code of Conduct now contains a specific requirement not to bully any person (bullying is not defined but the Standards Board has issued guidance on what conduct constitutes bullying).
- 3.4 Accordingly the Planning and Licensing Codes of Practice should be amended to reinforce the requirement not to bully as set out in **Appendices 2 and 3**.

Personal Interests

- 3.5 The Code of Conduct now provides that where a member's personal interest arises because he is a member of or in a position of general control or management of a body to which he was appointed or nominated by the Council or which exercises functions of a public nature then the member is now only required to declare the interest at a meeting if he or she actually addresses the meeting on the item of business affecting that body. Therefore, in these limited cases, if a member chooses not to address the meeting he or she is not required to declare the interest at the meeting.
- 3.6 Accordingly the Planning and Licensing Codes of Practice should be amended to reflect this as set out in **Appendices 2 and 3**.

Prejudicial Interests

- 3.7 Under the old code a member with a prejudicial interest would have to withdraw from a meeting as soon as it became apparent that he or she had a prejudicial interest. The member would not be able to address the meeting or answer questions. As soon as he or she made their declaration the member was required to leave the meeting or simply not attend in the first place. Now, a member with a prejudicial interest may attend a meeting but only to answer questions, give evidence or make representations and only if the public are also allowed to attend the meeting for the same purpose. Once the member has answered questions or given evidence or made representations the member is required to leave the room for the rest of that item.
- 3.8 This is a significant difference and means that a member could make representations on, say, a planning application in which he or she had a prejudicial interest although there would still be an absolute prohibition on voting on the matter.
- 3.9 However, so far as the Licensing Code is concerned, a member can in practice only make representations if in accordance with the rules governing licensing matters they previously made valid objections or supporting representations on the matter. The recommended amendment to the Licensing Code is therefore slightly different to reflect this.
- 3.10 Accordingly the Planning and Licensing Codes of Practice should be amended to reflect this as set out in **Appendices 2 and 3**.
- 3.11 Under the old Code of Conduct a member could regard himself as not having a prejudicial interest in a matter that related to;
- Another relevant authority of which he or she was a member
 - Another public authority in which he or she held a position of general management or control
 - A body to which he or she had been appointed or nominated by the Council
- 3.12 These exceptions have all now been removed and so paragraph 8(c) of the Planning Code of Practice should be deleted as set out in **Appendix 2**.

Confidential Information

- 3.13 The new Code of Conduct contains updated provisions relating to confidential information and in particular the circumstances under which confidential information may be disclosed.
- 3.14 Accordingly paragraph 8.3 of the Protocol on Members' Rights of Access should be amended to reflect this as set out in **Appendix 4**.

- 3.15 Paragraph 8.3 also requires an amendment due to a minor change in the wording and in the numbering of the paragraphs in the new Code. This is also set out in **Appendix 4**.

Further revisions to the Planning Code

- 3.16 At the meeting on 15 October 2007 the Standards Committee delegated the power to the Borough Solicitor to make further minor amendments to the Planning and Licensing Codes to correct minor drafting errors. Accordingly some minor drafting changes recommended in **Appendices 2 and 3** arise from the Borough Solicitor making such changes.

- 3.17 At a meeting on 17 January 2007 the Standards Committee considered the annual report reviewing the Planning Code of Practice for the period June 2005 to May 2006. The Standards Committee recommended an amendment to paragraph 23 of the Planning Code in order to provide more flexibility to the Head of Area Planning in considering revisions to planning applications. Paragraph 23 of **Appendix 2** has been amended accordingly to reflect that recommendation.

Training on the new Code of Practice

- 3.18 The changes to the Planning Code of Practice arise from the changes to the Code of Conduct. The Borough Solicitor has held training sessions for members to explain the changes introduced by the new Code of Conduct and a series of Monitoring Officer Advice Notes is also being issued which deal with different aspects of the new Code.
- 3.19 Some training will be held for the members of the Planning and Licensing Committees to discuss the changes to the Planning and Licensing Codes of Practice.

4.0 Financial Implications

- 4.1 There are no financial implications arising out of the changes to the Planning and Licensing Codes of Practice and the Protocol on Members' Rights of Access to Information.

5.0 Legal Implications

- 5.1 Any breach of the Planning and Licensing Codes and the Protocol on Members' Rights of Access to Information may be a breach of the Brent Member Code of Conduct for which members can be reported to the Standards Board and if found to have breached the Code they can face suspension and in some cases disqualification.

6.0 Diversity Implications

- 6.1 There are no diversity implications arising out of the changes to the Planning and Licensing Codes of Practice and the Protocol on Members' Rights of Access to Information.

7.0 Staffing Implications

- 7.1 There are no staffing implications arising from the changes to the Planning and Licensing Codes of Practice and the Protocol on Members' Rights of Access to Information.

Should any person require any further information about the issues addressed in this report, please contact Terry Osborne, Borough Solicitor on telephone number 020 8937 1292.

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