



Standards Committee

15 October 2007

Report from the Borough Solicitor

For Action

Wards Affected:

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 Recommend to the Council to adopt 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 this report.
- 2.2 Note that the changes to the Planning Code of Practice, the Licensing Code of Practice and the Protocol on Members Rights of Access to Information recommended in this report are required as a consequence of adopting the new Code of Conduct and are required to ensure consistency between the two Codes.

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 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 a new Code of Conduct on 10 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 Code of Conduct need to be amended to reflect the changes made to the Code of Conduct.
- 3.3 It is the Standards Committee's role to advise the Council on the adoption and revision of the Planning and Licensing Codes of Practice and any other code of conduct or practice which is adopted.
- 3.4 A copy of the new Code of Conduct is attached as **Appendix 1**;
- A copy of the amended Planning Code of Practice with the recommended changes highlighted as tracked changes is attached as **Appendix 2**.
 - A copy of the amended Licensing Code of Practice with the recommended changes highlighted as tracked changes is attached as **Appendix 3**.
 - A copy of the amended Protocol on Members Rights of Access to Information with the recommended changes highlighted as tracked changes is attached as **Appendix 4**.
- 3.5 The changes to the Planning and Licensing Codes of Practice and the Protocol on Members Rights of Access to Information are discussed in more detail below. Members are asked to recommend that the Council adopt these changes.

Treating Others With respect

- 3.6 The new 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).
- 3.7 Accordingly the Planning and Licensing Codes of Practice should be amended to reflect this as set out in **Appendices 2 and 3**.

Personal Interests

- 3.8 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 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 is not required to declare the interest at the meeting.

- 3.9 Accordingly the Planning and Licensing Codes of Practice should be amended to reflect this as set out in **Appendices 2 and 3**.

Prejudicial Interests

- 3.10 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 had a prejudicial interest. The member would not be able to address the meeting or answer questions. As soon as they made their declaration they would have to leave the meeting or simply not attend in the first place. Now, a member with a prejudicial interest may attend a meeting to answer questions, give evidence or make representations provided that the public are also allowed to attend the meeting for the same purpose. Once they have answered questions or given evidence or made representations they must leave the room.
- 3.11 This is a significant difference and means that a member could make representations on, say, a planning application in which he had a prejudicial interest although there would still be an absolute prohibition on voting on the matter.
- 3.12 However so far as the Licensing Code is concerned, a member can in practice only make representations if they are not on the committee (and had previously made valid objections or supporting representations) since this is a quasi-judicial Committee and it would be a breach of the principles of natural justice for them to support or oppose an application when sitting on the Committee. The recommended amendment to the Licensing Code is slightly different and reflects this.
- 3.12 Accordingly the Planning and Licensing Codes of Practice should be amended to reflect this as set out in **Appendices 2 and 3**.
- 3.13 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 they were a member
 - Another public authority in which they held a position of general management or control
 - A body to which they had been appointed or nominated by the Council
- 3.14 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

- 3.15 The new Code of Conduct contains updated provisions relating to confidential information and in particular the circumstances under which confidential information may be disclosed.
- 3.16 Accordingly paragraph 8.3 of the Protocol on Members' Rights of Access should be amended to reflect this as set out in **Appendix 4**.
- 3.17 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**.

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 If, prior to the recommended changes to the Planning and Licensing Codes of Practice and the Protocol on Members' Rights of Access to Information being adopted by the Council any issues arise with inconsistency between the Codes, the Code of Conduct will be preferred as a matter of law. The Code of Conduct is derived from the Model Code of Conduct issued by the Secretary of State and the mandatory provisions within that Model Code apply across all Local Authorities throughout England whether the Council adopts the Code or not.
- 5.2 Additional terms may only be added to a Code of Conduct where they are consistent with the terms of the Model Code. All the provisions of the Code of Practice recommended for change in this report reflect changes to mandatory provisions in the Code of Conduct.

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.

Background Papers

Brent Members Code of Conduct

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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