

LONDON BOROUGH OF BRENT
STANDARDS COMMITTEE – 19 OCTOBER 2004
REPORT FROM THE BOROUGH SOLICITOR

For Action

WARDS AFFECTED: ALL

REPORT TITLE : REVIEW OF THE PLANNING CODE OF PRACTICE

1.0 SUMMARY

This is an annual report from the Borough Solicitor following the independent review of the Planning Code of Practice for the period June 2003 to May 2004.

2.0 RECOMMENDATIONS

Members:

- 2.1 note the findings of the independent review and the comments of the Borough Solicitor as set out in the body of the report
- 2.2 make recommendations to the Borough Solicitor on whether momentary absences from Planning Committee should preclude a member of the committee from voting on a particular matter
- 2.3 note that the Borough Solicitor will be writing to members reminding them that when appointing alternates for the Planning Committee care should be taken to ensure that all wards should, if possible, contain a councillor who is not a member or alternate of the Planning Committee.
- 2.4 note that the Democratic Services Manager is seeking to obtain an improved public address system for Planning Committee and will, together with the Borough Solicitor, consider further improvements to the operation of the committee.
- 2.5 Agree that the independent review of the Planning Code of Practice should continue to be undertaken every year.

3.0 FINANCIAL IMPLICATIONS

- 3.1 None.

4.0 LEGAL IMPLICATIONS

- 4.1 The Planning Code of Practice under the Council's Constitution was adopted on 22nd May 2002 and has been amended subsequently following recommendations from this committee and from the Borough Solicitor.
- 4.2 Under the Council's Constitution the Standards Committee is required to assist members and co-opted members to observe the Brent Members' Code of Conduct (and the Planning Code of Practice), to advise on revisions to the Code and to monitor the effectiveness of it.
- 4.3 Under the local Government Act 2000, if Members commit a breach of the Brent Members Code of Conduct, the matter can be referred to the Standards Board for England. An Ethical Standards Officer investigating the case could refer it back to the Standards Committee for determination or refer it to a case tribunal of the Standards Board. In either instance, the Member concerned could be suspended or disqualified. A finding that a breach had occurred could affect the outcome of an Ombudsman investigation or a judicial review. A breach of the Planning Code will not necessarily be referable to the Standards Board (unless there is also a breach of the main Code of Conduct) but adherence to the Code should mean that planning decisions are able to withstand legal challenge either by way of JR or on appeal or on complaint to the ombudsman.

5.0 DETAIL

- 5.1 The annual review of the Planning Code of Practice is commissioned by the Borough Solicitor as required by paragraph 2 of the Planning Code. The review report, prepared by Tim Baker, a consultant, 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. A copy of his report is attached to this report.
- 5.2 Members will recall that they considered a similar report last year. This years review comments on the recommendations made last year and progress made towards implementing those recommendations.
- 5.3 Generally, the report shows that there is a high level of compliance amongst members and officers and that on the whole the Code is working well. This is borne out by comments received from both officers and members and the evidence obtained during the review.
- 5.4 The report makes 6 recommendations. These are set out below, together with the Borough Solicitor's comments on those recommendations:

Recommendation 9.1: Members of the Planning Committee should be further reminded, by the Borough Solicitor, that political considerations should pay no part when voting on applications.

The Borough Solicitor has attended the vast majority of Planning Committees herself over the past few months and it appears to her that members are well aware that political considerations should play no part in the decision making process in

relation to development control matters. She does not consider that it is necessary to remind members of this principle at the current time and that she would prefer to focus members' minds on the issues in respect of which they do need a clearer understanding.

Recommendation 9.2: There should be greater understanding, by Planning Committee Members, of the differences between the declaration of Personal Interests, Prejudicial interests and approaches made by applicants or objectors. This should be achieved either through formal training session or through other means of communication.

The Borough Solicitor has issued a Monitoring Officer Advice Note which provided advice to members on the difference between registering an interest and declaring an interest and the difference between personal and prejudicial interests and the procedure for responding to them at committee. In addition, a further training event is planned for November for all members to address the issue of interests and conduct. It is therefore considered that this recommendation has already been acted upon.

Recommendation 9.3: Paragraph 30 of the Code of Practice (and the corresponding Standing Order) should be review so that the risk of members being prevented from taking part in a vote on a matter because of a momentary absence from the meeting are minimised.

The purpose of this rule, and the corresponding Standing Order, is to provide clarity to both members and officers. However, the negative effect is that some members are prevented from voting on a matter because of a momentary or short absence from the meeting, thereby impacting on the ability of democratically elected members to represent their residents. We need to be able to strike a balance between the two competing principles and it is suggested that the Borough Solicitor gives this further consideration and consults with members and colleagues, including members of the CMG before developing some proposals. Members of this committee are requested to make recommendations to the Borough Solicitor on this issue.

Recommendation 9.4: 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.

The Borough Solicitor will be writing to all councillors by way of a Monitoring Officer Advice Note identifying the problems that arose in a recent planning case in another authority which highlighted amongst other things the need for adequate ward representation. It is considered therefore that this recommendation has already been acted upon.

Recommendation 9.5: Further enhancements to the Committee meeting process should be progressed, especially the provision of a more suitable public address system.

The Democratic Services Manager has already made enquiries about obtaining a new public address system for the planning committee and further improvements will be considered by him and the Borough Solicitor to improve the operation of the committee.

Recommendation 9.6: Because of improvements made during recent years and the consistency of the adherence to the Code, consideration should be given to reducing the audit frequency of the Planning Code of Practice from once per year to once per two years.

The Director of Environment and the Head of Planning are of the view that the reviews should continue to be undertaken every year so as to ensure that members are constantly reminded of the need to comply with the Codes. This will avoid a recurrence of the events that led to the George inquiry some years ago. This view is supported by the Borough Solicitor and therefore it is not recommended that the frequency of the reviews is reduced.

6.0 BACKGROUND INFORMATION

- Planning Code of Practice
- Independent annual review of the development control code of practice

Any persons wishing to inspect the papers in connection with the above proposals should contact Terry Osborne, Borough Solicitor at:-

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**Terry Osborne
Borough Solicitor**

APPENDIX Planning Code of Practice: Independent Annual Review

June 2003 to May 2004