



Audit and Standards Committee

**Tuesday 11 December 2018 on the rising of the
Audit and Standards Advisory Committee meeting**
Boardrooms 7&8 - Brent Civic Centre, Engineers Way,
Wembley HA9 0FJ

Membership:

Members

Councillors:

A Choudry (Chair)
Donnelly-Jackson
Kansagra
Naheerathan
Nerva

Substitute Members

Councillors:

Kabir, Lo, Long and Stephens

Councillors:

Colwill and Maurice

For further information contact: Nikolay Manov, Governance Officer
Tel: 020 8937 1348; Email: nikolay.manov@brent.gov.uk

For electronic copies of minutes, reports and agendas, and to be alerted when the minutes of this meeting have been published visit:

www.brent.gov.uk/committees

The press and public are welcome to attend this meeting.

Notes for Members - Declarations of Interest:

If a Member is aware they have a Disclosable Pecuniary Interest* in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent and must leave the room without participating in discussion of the item.

If a Member is aware they have a Personal Interest** in an item of business, they must declare its existence and nature at the start of the meeting or when it becomes apparent.

If the Personal Interest is also significant enough to affect your judgement of a public interest and either it affects a financial position or relates to a regulatory matter then after disclosing the interest to the meeting the Member must leave the room without participating in discussion of the item, except that they may first make representations, answer questions or give evidence relating to the matter, provided that the public are allowed to attend the meeting for those purposes.

***Disclosable Pecuniary Interests:**

- (a) **Employment, etc.** - Any employment, office, trade, profession or vocation carried on for profit gain.
- (b) **Sponsorship** - Any payment or other financial benefit in respect of expenses in carrying out duties as a member, or of election; including from a trade union.
- (c) **Contracts** - Any current contract for goods, services or works, between the Councillors or their partner (or a body in which one has a beneficial interest) and the council.
- (d) **Land** - Any beneficial interest in land which is within the council's area.
- (e) **Licences**- Any licence to occupy land in the council's area for a month or longer.
- (f) **Corporate tenancies** - Any tenancy between the council and a body in which the Councillor or their partner have a beneficial interest.
- (g) **Securities** - Any beneficial interest in securities of a body which has a place of business or land in the council's area, if the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body or of any one class of its issued share capital.

****Personal Interests:**

The business relates to or affects:

- (a) Anybody of which you are a member or in a position of general control or management, and:
 - To which you are appointed by the council;
 - which exercises functions of a public nature;
 - which is directed is to charitable purposes;
 - whose principal purposes include the influence of public opinion or policy (including a political party or trade union).
- (b) The interests a of a person from whom you have received gifts or hospitality of at least £50 as a member in the municipal year;

or

A decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of:

- You yourself;
- a member of your family or your friend or any person with whom you have a close association or any person or body who is the subject of a registrable personal interest.

Agenda

Introductions, if appropriate.

Item	Page
1 Apologies for absence and clarification of alternate members	
2 Declaration of interests Members are invited to declare at this stage of the meeting, the nature and existence of any relevant disclosable pecuniary or personal interests in the items on this agenda and to specify the item(s) to which they relate.	
3 Deputations (if any) To hear any deputations received from members of the public in accordance with Standing Order 67.	
4 Planning Code of Practice Review update The report updates the Committee on the outcome of the Independent Review, and the consequential recommended changes, in relation to the Planning Code of Practice. This review is required under the Constitution. The Audit and Standards Committee is asked to consider the contents of the report and approve the proposed changes to the Planning Code of Practice.	1 - 36



- Please remember to **SWITCH OFF** your mobile phone during the meeting.
- The meeting room is accessible by lift and seats will be provided for members of the public.

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	<p align="center">Audit and Standards Advisory Committee</p> <p align="center">11 December 2018</p>
	<p align="center">Report from the Director of Legal and HR Services</p>
<p>Planning Code of Practice Review Update</p>	

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
No. of Appendices:	Two: <ul style="list-style-type: none"> Independent Expert, Planning Code of Guidance review report Planning Code of Practice
Background Papers:	None
Contact Officer(s): <small>(Name, Title, Contact Details)</small>	<p>Debra Norman Director of Legal and HR Email: debra.norman@brent.gov.uk Tel: 020 8937 1578</p> <p>Alice Lester Head of Planning, Transport and Licensing Email: alice.lester@brent.gov.uk Tel: 020 8937 6441</p> <p>Bianca Robinson Senior Constitutional and Governance Lawyer Email: bianca.robinson@brent.gov.uk Tel: 020 8937 1544</p>

1.0 Purpose of the Report

- 1.1 The purpose of this report is to update the Committee on the outcome of the Independent Review, and the consequential recommended changes, in relation to the Planning Code of Practice. This review is required under the Constitution.

2.0 Recommendations

- 2.1 That the Audit and Standards Advisory Committee consider and note the contents of the report.

- 2.2 That the Audit and Standards Committee consider the contents of the report and approve the proposed changes to the Planning Code of Practice.
- 2.3 To note that upon approval by the Audit and Standards Committee, the Monitoring Officer will implement the changes in accordance with her delegated powers.

3.0 Detail

Background

- 3.1 On the 22 January 2018, following a comprehensive internal review of the Council's decision making arrangements concerning planning matters, Full Council approved changes to the terms of reference of the Planning Committee, standing orders and the Planning Code of Practice (the code). All of which came into effect on approval.
- 3.2 As reported to Full Council at the time, the code was also being independently reviewed by a planning expert. The review has now been completed and a copy of the report is attached as Appendix One. This report updates the Committee on the independent expert's findings, recommendations and consequential action taken by officers.

Key findings of Independent Review (IR)

- 3.3 The IR supports all the changes made and approved by the Council in January 2018, noting "that the overall structure of Brent's Code and changes were sound".
- 3.4 The reviewer noted that the code covered all essential issues and areas in accordance with best practice and the latest guidance.
- 3.5 He considered the codes of other neighbouring borough's namely Ealing, Harrow, Hammersmith & Fulham, Camden, Kensington & Chelsea and Westminster and advised the code stands up well in comparison.
- 3.6 He noted that the Planning Committee meeting he observed was very well chaired and that the Committee administration was good, with a good guidance sheet circulated at the meeting. The reviewer found officer presentations made the technical reports easier to understand and Members generally exhibited an understanding of material matters. The reviewer noted there was a "little playing to the audience" but overall the meeting was well run and the impact of the code was evident.
- 3.7 When analysing the Planning Committee decisions, to ascertain if the decisions were contrary to officer recommendations, the reviewer noted that in the municipal year 2017-2018 only two recommendations from officers (out of 53 decisions) were overturned by the Planning Committee. This was a very low percentage, below the governments "red flag" of 10% and consequently no cause for concern.

Key Recommendations/Suggestions of Independent Review

- 3.8 The IR identified a few minor, straightforward and mainly clarification changes to the text of the code. Attached as Appendix Two is a marked copy of the code reflecting the reviewer's changes.

The recommendations are as follows:

- a) **use of sub-headings:** the greater use of sub-headings and paragraph numbering to make the code easier to navigate.

Each paragraph has been numbered so it is clear there are 14 sections. As the code is reviewed and updated more detailed sub-heading will be considered.

- b) **Members explaining their reasons for making a comment (para 4.2):** the code is clear that members who comment at Committee, whether in agreement or disagreement with the recommendation, must provide their reasons.

The reviewer suggested that the code should clarify that if a Planning Committee Member opts to act in a representative (as opposed to decision making) capacity then he/she should be subject to the same rules as other Members.

It was raised with the reviewer that when a Planning Committee Member opted to act as a representative (as opposed to a decision maker), they were automatically subject to the same rules in clause 4.2. This was accepted by the reviewer.

The Head of Planning, Transport and Licensing has also confirmed that this principle has been added to the member/officer training material.

- c) **call-in (para 5):** the IR suggested putting "back- in" in to the code a section referring to the Planning Committee call-in criteria, in the interests of ensuring clarity and understanding.

It was raised with the reviewer that the Planning Committee Terms of Reference (ToR), adopted by Full Council in January 2018, included a robust call –in criteria and Part 5 of the Constitution contained a protocol on call-in and accordingly there were clear and robust process in place. This was accepted by the reviewer.

To ensure clarity as to the call-in procedure for Planning Committee, the ToR "Criteria for Councillor referral" sub-heading has been reviewed. The sub-heading will be amended to include "(call –in procedure)".

Further, The Head of Planning, Transport and Licensing and her team will ensure Members are made aware and reminded of the criteria.

- d) **Development proposals by officers (para 6.2):** the revised code included a section on behaviour standards for planning applications from members of the Council. The reviewer recommended a similar section be included for applications from officers. A new section has been inserted at 6.2.

The reviewer also notes that although he was minded to recommend that all

officer, Member and Council applications should always be decided by the Planning Committee, he supports the Council's position on this issue.

It was explained to the reviewer that after careful consideration, the Council decided that there was no overriding justification for automatically referring these applications to the Planning Committee in all cases. Instead, normal rules should be applied with flexibility. So that, the discretion officers have to refer applications to the Planning Committee for determinations was a more proportionate and consistent approach.

For example, this is what was said in our report to Full Council in January:

“Removal of the requirement for planning applications submitted by Planning Committee Members to be decided by the Planning Committee in all cases. Instead normal rules, i.e. the updated and improved terms of reference of the Planning Committee (as proposed) which set out when applications have to or can be considered by the Committee, will apply. The relevant criteria, including the general discretion officers have to refer applications to the Planning Committee, provide proportionate safeguards. However, applications considered under officer delegated powers will be approved by the Head of Planning or the Strategic Director Regeneration and Environment.”

It was also highlighted that such an approach would result in minor and insignificant applications going to Planning Committee. This would be costly in time, effort and money and achieve no public interest benefit. The reviewer noted and supported the Council's position.

- e) **Lobbying (para 7.2):** the reviewer suggested additional guidance text be included in to the code about lobbying. This has been incorporated into clause 7.

4.0 Financial Implications

- 4.1 There are no financial implications arising out of this report.

5.0 Legal Implications

- 5.1 There are no legal implications arising out of this report.

6.0 Equality Implications

- 6.1 There are no equality implications arising out of this report.

7.0 Consultation with Ward Members and Stakeholders

- 7.1 Not applicable.

Report sign off:

DEBRA NORMAN
Director of Legal and HR Services

APPENDIX ONE

London Borough of Brent – Planning Code of Practice Review

Final Draft @ 24-5-18

For: Looqman Desai, LB Brent Senior Solicitor

Alice Lester, Head of Planning Transport and Licensing

By: Marc Dorfman MDC

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- A.5 How does Brent's Code compare to its neighbouring Boroughs?
- A.6 Planning Committee in Action
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- A.9 Overall Conclusion

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D. KEY REVIEW ISSUES; LBB RESPONSE & FINAL REVIEW CONCLUSIONS

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F. REVIEW COMMENTARY ON BRENT PROPOSED CHANGES TO THE CODE

Appendix 1. LB Brent Planning Code of Practice – with proposed Brent changes and Review Draft Comments

Appendix 2. LGA/PAS “Probity in Planning” 2013 – Latest best practise guidance to Local Planning Authorities on Decision Making in Town Planning

Appendix 3. Brent Planning Committee Terms of Reference (ToR)

A. INTRODUCTION, KEY ISSUES & OVERALL CONCLUSIONS

A.1 Structure of the Review

This **Final Draft Review Document** is to be read with a marked - up copy of the proposed LB Brent “Planning Code of Practice” set out in Appendix 1.

- LB BRENT’s own proposed Code changes, (Appendix 1), are highlighted in **RED, BLUE and YELLOW**, (**Brent’s original document sent to Marc Dorfman**).
- “Review Comments” in Appendix 1, are **BLACK BOLD when supportive of the Brent changes**. They sit between paragraphs. Review Comments are not numbered. Each comment, (when there is a comment), refers to the paragraph before it.
- Where there are “Review Comments” which recommend further LB Brent consideration and clarification, they are highlighted in **BROWN BOLD**, both in Appendix 1 and in Section F. REVIEW COMMENTARY below. These issues of clarification have now been dealt with by exchanges between LBB Officers and the Reviewer.
- There were 30 proposed Brent sub section changes overall to the Code, considered and approved by Full Council in January 2018. At the same time LB Brent also put in place new terms of reference for the Planning Committee and linked changes to planning standing orders.
- Out of the 30 changes to the Code, (in a document that had 14 main sections and 57 sub sections in total), the Review initially supported 25

of the 30 proposed changes and asked LB Brent to consider and clarify 5. **Section D** below sets out these 5 issues – these were responded to by LBB and **the Review now notes and supports all of Brent’s 30 proposed changes and responses.**

- The Review proposes that LB Brent introduces summary sub – headings to each of Brent’s proposed paragraphs in the Code to make it easy for the reader to see any part of the Code in context; to go to a particular section and to help in future reviews and comparisons. These sub headings are in **BOLD GREEN**. LB Brent can consider and change these – they are not essential and simply offered for ease of reading.

A.2 Purpose of the Review of the LB Brent Planning Code of Practice, and the Proposed 2018 Changes

- i) Desktop review of the Planning Code of Practice and proposed changes – is it up to date? Does it comply with “best practice”?
- ii) How does Brent’s Code compare with other London Boroughs?
- iii) After attending LB Brent Planning Committee, check if the standards set out in the Code relates to the reality. If necessary carry out stakeholder interviews
- iv) Analysis of Planning Committee decisions where contrary to officer recommendations. Consider any recommendations with Head of Planning
- v) Make any appropriate overall findings and recommendations for improvement.

A.3 Structure of the Brent Code

The overall structure of Brent’s Code and in general its own proposed changes are considered sound.

A.4 How Does the Brent Code Compare with National Guidance and Best Practise?

When compared to the guidance to Local Planning Authorities on the design and content of Planning Codes, (LGA Planning in Probitry” 2013), the Brent Code and its proposed changes covers all essential issues and areas and can be seen to have made its Code relevant to local planning issues. Brent’s approach has been to concentrate on “conduct and behaviours” rather than operational rules. This seems sensible if the Code is to sit in the Constitution.

A.5 How does the Brent Code Compare with Neighbouring London Boroughs?

The following London LPAs have been examined via a web site assessment of the Constitution and any special Planning Protocol/Code of Practice:

Ealing, Harrow, Hammersmith & Fulham, Camden, Kensington & Chelsea and Westminster. These are all Brent's nearest neighbour's.

Findings:

Harrow and Camden's Code are comprehensive and detailed and set out both conduct and operational standards and guidance.

Hammersmith & Fulham and Ealing have similar Codes to Brent. They concentrate on conduct issues.

In terms of Kensington and Westminster, it is not obvious that either of these Boroughs have special Planning Codes of Practice, easily available on the web or referred to in their Constitutions. Westminster has a "member's handbook", that covers general decision making behaviour and procedure, (operations).

Brent's own recent proposed Code improvements, and changes to how Planning Committee is now managed, have demonstrated to this Review that the Borough's Code now covers all essential elements as set out in the 2013 LGA/PAS "Probity in Planning" Guidance – the latest and best practice guidance. Although some other Borough's Codes cover both conduct and Committee operational matters, (and are therefore larger), the Brent proposed Code, stands up well in comparison to the sample looked at. Brent's focus on "conduct and behaviours" seems sensible when the Code is to be included in a Constitution. A concentration on "behaviours" provides strong constitutional guidance, whilst allowing procedure and operations to change more easily.

A.6 Planning Committee – the Code in Action

Planning Committee on 14th March 2018 was observed by the Reviewer.

The Cttee room was accessible and there were refreshments for the public. The public was able to see the presentation slides. Cttee questions, answers and the debate were audible. Public copies of the Agenda were available.

Cttee administrators made sure the room was ready for the Cttee at 7pm. This included a good guidance sheet for the public and members that explained:

- The Cttee running order
- Roles and responsibilities of officers and members
- Speaking rights
- Meeting conduct
- The importance of "open minded decisions"

- Material considerations
- Further information and openness to public views and comments

The Meeting was very well chaired and Cttee members respected the Chair's authority. The Chair introduced the Cttee and its purpose and proceedings very well. The Chair brought officers into the debate in appropriate ways and gave way to the Lead Planning Advisor at appropriate moments/stages.

Officer presentations made the technical Agenda reports easier to understand.

Members generally exhibited an understanding of material matters. There was a "little playing to the audience", but this was managed well by the Chair and Lead Officers. This is something that continually needs to be addressed in member/officer training.

Overall the Planning Committee was well run and one could see the impact of the Brent Planning Code.

A.7 Analysis of Planning Committee decisions where contrary to officer recommendations

Over the past municipal year (2017-18) only two recommendations from officers have been overturned by committee (out of 53 decisions). This represents a very low percentage and is of no cause for concern. The sample is too small to justify investigation and any meaningful conclusions.

In terms of the government's measure of quality of decisions, as assessed by the number of major applications overturned on appeal (ie refused by the Council and subsequently allowed by the Inspectorate), the Council's performance is 0% (lower is better); the government's 'red flag' is triggered at 10%. Brent's performance on appeal is well clear of this level.

Based on these two statistics, there is no need to question the robustness of the decision making further.

A8. Key Review Issues

There were 30 proposed Brent sub section changes overall to the Code, considered and approved by Full Council in January 2018. At the same time LB Brent also put in place new terms of reference for the Planning Committee and linked changes to planning standing orders.

Out of the 30 changes to the Code, (in a document that had 14 main sections and 57 sub sections in total), the Review initially supported 25 of the 30 proposed changes and asked LB Brent to consider and clarify 5:

- **Section 4.2** Members explaining the reasons for making a comment at Planning Committee.
- **Section 5 and 5.1** “Call – In” procedures
- **Section 6.1** Development proposals by Councillors
- **Section 6.2** Development proposals by Officers
- **Section 7.1** “Key Lobbying Advice”

Section D below sets out these 5 issues – these were responded to by LBB and the Review now notes and supports all of Brent’s 30 proposed changes and responses.

A.9 Overall Conclusion

Overall the LB Brent Planning Code of Practice for Members and Officers is sensibly structured and covers all important issues set out in national guidance (LGA/PAS “Probity in Planning” 2013). The proposed 2018 LB Brent changes are supported by the Review. Sensibly, Brent’s proposed Code focuses on “behaviours and conduct” which will have longevity, rather than “operational” matters, which will need to be changed from time to time and should be outside of the Constitution.

B. PROPOSED CODE SECTIONS & COMPARISON TO LGA GUIDANCE 2013

The main headings of the “industry standard guide” to Local Planning Authority good practice codes are set out below. This is followed by the headings of the LB Brent proposed Code of Practice 2018. Both have been reviewed, and the Brent proposed Code is judged to cover all essential issues. Whilst the Brent Code is more detailed on member and officer actions and relationships, the LGA guidance covers a wider range of issues that are practical but not essential and which could be in “operation guidance” rather than in a code of conduct, (e.g. committee public speaking rights and committee report content).

LGA Guidance - Headings 2013

1. Purpose of Planning & Decision Making Good Practice
2. Role and Conduct of Councillors and Officers
3. Registration and Disclosure of Interests
4. Predisposition, predetermination or bias
5. Officer and member planning applications
6. Lobby of and by councillors
7. Pre – application and post submission discussions

8. Officer reports
9. Public speaking
10. Planning decisions, and motions contrary to policy and officer recommendation
11. Committee site visits
12. Committee performance and monitoring

Proposed Brent Planning Code of Practice - Headings 2018

1. Purpose of the Code
2. The Principles of Planning Decision Making
3. Bias and Predetermination
4. Accountability and Interests
5. Call – In Powers and Procedures
6. Development Proposals by Councillors, Officers and the Council
7. Approaches to Members of the Planning Committee - Lobbying
8. Discussions Between Members, and Meetings with Developers, including Pre – Application Meetings
9. Planning Committee Site Visits
10. Membership and Jurisdiction of the Planning Committee
11. Meeting of the Planning Committee
12. Member and Officer Relations
13. Training for Planning Committee
14. Review of the Code of Practice

C. PROPOSE CODE SECTIONS & COMPARISON TO OTHER LONDON COUNCILS

The following London LPAs have been examined via a web site assessment of the Constitution and any special Planning Protocol/Code of Practice:

Ealing, Harrow, Hammersmith & Fulham, Camden, Kensington & Chelsea and Westminster. These are all Brent's nearest neighbour's.

Findings:

Harrow and Camden's Code are comprehensive and detailed and set out conduct and operational standards

Hammersmith & Fulham and Ealing have similar Codes to Brent. They concentrate on conduct issues.

In terms of Kensington and Westminster, it is not obvious that either of these Boroughs have special Planning Codes of Practice, easily available on their web sites. Westminster does have a member's handbook – guidance document, (though not easily available on the web site). Both Authorities focus on simple rules relating to delegation and call in – and council – wide

codes based on the 7 standards of public life. This supports a code based “behaviour” rather than operations. This is similar to Brent, though Brent’s code is more considered and relates more to its local context.

Brent’s own recent proposed Code improvements, and changes to how Planning Committee is now managed, have demonstrated to this Review that the Borough’s Code now covers all essential elements as set out in the 2013 LGA/PAS “Probity in Planning” Guidance – the latest and best practice guidance. Although some other Borough’s Codes cover both conduct and Committee operational matters, (and are therefore larger), the Brent proposed Code, stands up well in comparison to the sample looked at.

D. KEY REVIEW ISSUES, LBB RESPONSE & REVIEW CONCLUSIONS

The Review proposed that LB Brent provided further clarification on 5 issues:

- **Section 4.2** Members explaining the reasons for making a comment at Planning Committee
- **Section 5 and 5.1** “Call – In” procedures
- **Section 6.1/2** Development proposals by Councillors & Officers
- **Section 7.1** “Key Lobbying Advice”
- **Code Sub Headings**

D.1 Section 4.2

Members explaining the reasons for making a comment at Planning Committee.

Members who comment at Committee must explain why they are commenting – setting out material planning reasons - and who they have had meetings with/been influenced by, if any.

Members who disagree with the officer recommendation must also explain the planning reasons behind their disagreement.

LB Brent to consider making this rule apply to both general Members and Committee Members, since this is the de facto situation now for Committee Members at Planning Committee. Currently the proposed code makes this rule only for...”a member who is not a Committee Member”.

LBB Response Section 4.2: When Committee Members opt to act in a representative (as opposed to a decision making) role, then they are subject to the same rules as other members.

Review Conclusion Section 4.2: Noted and supported.

D.2 Section 5 and 5.1 “Call – In” procedures

LB Brent is considering taking out altogether section 5 on “call – in”. Brent’s argument is sound – “call – in” procedures are rules, not behaviours. “Call – in” rules are set out in Part 5 of the Constitution – Planning Committee Terms of Reference (ToR), where “call – in” thresholds are set out.

Notwithstanding the above LB Brent should consider putting a “Call – In” section in to the Code to explain “call – in” behaviours and where the rules for Call in are (e.g. Part 5). This would support clarity, since “call – in” can be a contentious member/community issue. “Call – in” must be for legitimate planning reasons only; reasons must be set out in writing and put in the Committee report – and “call – in” members must attend Planning Committee and speak to only material planning issues.

LBB Response Section 5: The new terms of reference of the Planning Committee (Full Council January 2018), include clear and robust call- in criteria. Members will be made aware and reminded of these criteria.

Review Conclusion Section 5: Noted and supported.

D.3 Section 6.1 & 6.3 Development proposals by Councillors and by the Council

As the current proposals for the Code stand, LB Brent only propose setting out behaviour standards for applications from members and the Council.

LB Brent should consider an additional section for “officer applications” – a “**Section 6.2 Development proposals by Officers**”.

In existing Sections 6.1 and 6.3, LB Brent indicates that some applications “might be able to be delegated to officers for decision”, including some member applications. Normally all member, officer and Council applications would go to Committee to support full transparency. Brent should review again and make sure that only very minor applications by the Council can be delegated, with appropriate officer clearance, but perhaps all member and officer applications should go to Committee.

LBB Response Section 6: After careful consideration, LBB feels there is no overriding justification for automatically referring these applications to Committee in all cases. The rules provide a discretionary system to support

both flexibility and proportionate safeguards, including “sign off” by Head of Planning or a Strategic Director if schemes are to be delegated.

Review Conclusion Section 6: Noted and supported.

D.4 Section 7.1 “Key Lobbying Advice”

The Review supports Brent’s proposals.

LB Brent to also consider including further explanatory detail – e.g. ...” lobbying is normal in both politics and in planning decisions. However, lobbying must not result in a member of Planning Committee having a closed mind at the point of decision making, otherwise that member must withdraw from any Committee decision making role”.

LBB Response Section 7: Newly approved guidance makes clear the importance of decision making with an open mind. Members will be made aware and reminded of this context.

Review Conclusion Section 7: Noted and supported.

D.5 Introduce “sub – heading” titles for all paragraphs in the Code

This will provide better clarity, overall context and will support easy updating/changes in the future.

LBB Response Section 7: As the Code is reviewed and updated, the suggestion of more detailed sub headings can be considered.

Review Conclusion Section 7: Noted and supported

E. PROPOSED NEW BRENT CONTENTS LIST

Please note the Brent proposed structure remains along with all the proposed paragraphs. The Review is simply proposing that each paragraph is given a “describing sub – heading”, under each of the 14 main sections.

- 1 Purpose of the Code

- 1.1 Member and Officer Code of Conduct Background
 - 1.2 Code Values: Impartial, Transparent, Accountable, Integrity, Objective and Proper Planning Matters
 - 1.3 Risks of Failing to Abide by the Code
 - 1.4 Monitoring Officer and Service Officers are available to help
- 2 The Principles of Planning Decision Making
- 2.1 Public Interest, Plan led and Based on Material Planning Considerations
 - 2.2 Planning – a Formal Administrative Process
 - 2.3 Natural Justice
 - 2.4 Human Rights
- 3 Bias and Predetermination
- 3.1 Bias and Appearance of Bias
 - 3.2 Predetermination and Predisposition – keep an “open mind”
 - 3.3 “Indicating a View” as long as long as it is not a “Final View”, which must only be reached at Planning Committee after hearing all sides and Evidence
 - 3.4 A decision maker should not have a “closed mind”
- 4 Accountability and Interests
- 4.1 A Planning Committee Member must have no other personal or business interests in town planning
 - 4.2 Declaring the reason behind making a comment at Planning Committee
 - 4.3 Personal Interest
 - 4.4 Prejudicial Interest
 - 4.5 Disclosable Pecuniary Interest (DPI)
 - 4.6 Registering a Disclosable Pecuniary Interest (DPI) on a Planning Matter
 - 4.7 Implications of Failing to Comply with DPI rules
 - 4.8 “Call – in” to Planning Committee and Member Interests
 - 4.9 Member Interest Guidance - Associations and Prejudicial Interests
 - 4.10 Member Interest Guidance - Member Register of Contacts and the Monitoring Officer
 - 4.11 Officer Interest Guidance – Inappropriate Involvement
 - 4.12 Officer Interest Guidance – Other Paid Work
 - 4.13 Officer Interest Guidance – RTPi Code
- 5 Call – In Powers and Procedures
- 5.1 Member “Call – In” rights and powers
- 6 Development Proposals by Councillors, Officers and the Council

- 6.1 Development proposals submitted by Councillors
- 6.2 Development proposals submitted by Officers
- 6.3 Development proposals submitted by the Council

7 Approaches to Members of the Planning Committee - Lobbying

- 7.1 Key Lobbying Guidance
- 7.2 Advice to Members when Lobbying is inappropriate
- 7.3 Appropriate Lobbying
- 7.4 No Inappropriate Lobbying of Officers

8 Discussions between members and meetings with developers/representatives

- 8.1 Member Guidance on Discussing Planning Matters
- 8.2 Cabinet Member Guidance on Discussing Planning Matters
- 8.3 Member Guidance on Pre - Application Discussions

9 Planning Committee Site Visits

- 9.1 Main Purpose of a Member Site Visit
- 9.2 Who decides if the Planning Committee should go on a Site Visit?
- 9.3 Member Guidance for Committee Site Visits

10 Membership and Jurisdiction of the Planning Committee

- 10.1 Maintain a Ward Member for each ward who is not on Planning Committee to provide the public with a lobbying/engagement contact
- 10.2 Committee Briefings
- 10.3 Access to Information Guidance

11 Meetings of the Planning Committee

- 11.1 Planning Committee Guidance on Assessing Information for Decisions
- 11.2 Planning Committee should only consider authorised information for Decisions which have been assessed by Officer's and the Chair
- 11.3 Decisions Contrary to the Officers' Recommendation
- 11.4 Discussion and Questions and Answers at Committee should always be carried out with respect for all participants
- 11.5 Planning Committee members should not engage with any third parties at Committee
- 11.6 Discussion and Questions and Answers at Committee should only refer to material planning matters
- 11.7 Planning Committee Voting Guidance
- 11.8 Planning Officer Case Presentation Guidance

12 Member and Officer Relations

- 12.1 Member Complaints Procedure
- 12.2 Officer Support Procedure
- 12.3 Pressure on Officers to influence case recommendations is not acceptable

13 Training for Planning Committee

- 13.1 Member Planning Committee Training is Mandatory
- 13.2 New Planning Committee Members
- 13.3 Special Member Planning Committee Training

14 Review of this Code of Practice

- 14.1 Timetable and Purpose

F. REVIEW COMMENTARY ON BRENT PROPOSED CHANGES TO THE CODE

Not all sections of the Proposed Code are commented on by the Review – only those sections that the LB Brent propose to change – and proposed sections on which the Review seeks clarification.

The COMMENTARY format identifies the main and sub – heading name and number. Then there is a summary of Brent changes, (“Key Changes Proposed by Brent”) and a “Review Comment”

Please also see Appendix 1 which contains the LB Brent Code including its Review Comments and proposed paragraph sub headings.

LB Brent is proposing 30 changes to Code paragraphs. This Review supports all these except 5, on which further consideration and clarification is requested.

These are:

Section 4.2 Members explaining the reasons for making a comment at Planning Committee, including when proposing a contrary motion/decision to the officer recommendation. Comment and reasons to be material planning matters.

Section 5 and 5.1 “Call – In” procedures

Section 6.1 Development proposals by Councillors

Section 6.2 Development proposals by Officers

Section 7.1 “Key Lobbying Advice”

1. Purpose of this Code

1.1 Member and Officer Code of Conduct Background

- Key Changes Proposed by Brent:
 - Members “must” follow the code
 - Officers should also follow the code as well as HR policies and terms of employment
 - The code contains further detailed guidance for members
- Review Comments:
 - Changes are supported

2. The Principles of Planning Decision Making

2.1 Public Interest, Plan Led and Based on Material Planning Considerations

- Key Changes Proposed by Brent
 - Clarity on Plan Led and policy framework
 - Members of Planning Committee should not be directed by party politics
- Review Comments:
 - Changes are supported

2.2 Planning is a Formal Administrative Process

- Key Changes Proposed by Brent
 - Planning is a “formal administrative process”, not quasi - judicial
- Review Comments:
 - Changes are supported

3. Bias and Predetermination

3.1 Bias and Appearance of Bias

- Key Changes Proposed by Brent:
 - Planning Committee members to be and appear to be “fair minded”
 - Must not come to planning decisions with a “closed mind”.
- Review Comments:
 - Changes are supported

3.2 Predetermination and Predisposition – keep an “open mind”

- Key Changes Proposed by Brent:
 - Clarity on what predetermination and predisposition means.
- Review Comments:
 - Changes are supported

4. Accountability and Interests

4.1 Planning Committee Member must have no other personal or business interests in town planning

- Key Changes Proposed by Brent:
 - Clarity on what predetermination and predisposition means.
 - Removing a controversial rule that “members who do not support Council planning policies should not be on Planning Committee”
- Review Comments:
 - Changes are supported

4.2 Declaring the reason behind making a comment at Planning Committee

- Key Changes Proposed by Brent:
 - **Members who comment at Committee must explain why they are commenting – setting out material planning reasons - and who they have had meetings with/been influenced by, if any.**
 - **Members/Committee Members who disagree with the officer recommendation must also explain the planning reasons behind their disagreement.**
- Review Comments:
 - **Changes are supported.**
 - **In addition, LB Brent to consider making this rule apply to both general Members and Committee Members, since this is the de facto situation now for Committee Members at Planning Committee. Currently the proposed code makes this rule only for...”a member who is not a Committee Member”.**

4.3 Personal Interest

- Key Changes Proposed by Brent:
 - Clarity on speaking and vote rights
- Review Comments:
 - Changes are supported

4.8 “Call – In” to Planning Committee and Member Interests

- Key Changes Proposed by Brent:
 - If a member has a prejudicial or disclosable pecuniary interest, the member may not “call – in” the applications to Committee or request a site visit.
- Review Comments:
 - Changes are supported

4.11 Officer Interest Guidance – Inappropriate Involvement

- Key Changes Proposed by Brent:
 - Public Register on declarations of interest “will” be available for inspection.
- Review Comments:
 - Changes are supported

4.13 Officer Interest Guidance – RTPI Code

- Key Changes Proposed by Brent:
 - Officers must abide by RTPI advice on ethics and professional standards
- Review Comments:
 - Changes are supported

5. Call – In Powers and Procedures

5.1 Member “Call – In” procedures

- Key Changes Proposed by Brent:

- Call – in powers **are proposed to be removed from the Code**. Rightly Brent sees these as “rules and not behaviours”. They are set out in Part 5 of the Constitution Planning Committee ToR.
- **Review Comments:**
 - **LB Brent to consider including a section on “Call – In” even if it is being withdrawn from the Code.**
 - **LB Brent should consider putting a “Call – In” section in to the Code to explain “call – in” behaviours and where the rules for Call in are (e.g. Part 5). This would support clarity, since “call – in” can be a contentious member/community issue. “Call – in” must be for legitimate planning reasons only; reasons must be set out in writing and put in the Committee report – and “call – in” members must attend Planning Committee and speak to only material planning issues.**

6. Development Proposals Submitted by Councillors, Officers and the Council

6.1 Development proposals submitted by Councillors

- **Key Changes Proposed by Brent:**
 - **LB Brent Code makes provision for “some Cllr applications to be delegated to officers for decision”.**
- **Review Comments:**
 - **Review with LB Brent officers.** In LPAs it is normal for all planning applications by councillors, officers and the Council to go to a public Planning Committee for decision for the reason of proper transparency. Brent to review and consider supporting some minor Council applications being able to be delegated – but all officer and member applications going to Committee.

6.2 Development proposals submitted by Officers

- **Key Changes Proposed by Brent:**
 - **No section of “applications by officers”**
- **Review Comments:**
 - **LB Brent to consider including a section on application by officers**

7. Approaches to Members of the Planning Committee - Lobbying

7.1 Key Lobbying Guidance

- **Key Changes Proposed by Brent:**
 - Make clear what “inappropriate lobbying” is and its impact on decision making rights.
- **Review Comments:**
 - **Support proposed Brent changes.**
 - **LB Brent to consider further explaining in the Code, that “lobbying is normal in both politics and in planning decisions. However, lobbying must not result in a member of Planning Committee having a closed mind at the point of decision making, otherwise that member must withdraw from any role Committee decision making role”.**

8. Discussions between members and meetings with developers/representatives

8.1 Member Guidance on Discussing Planning Matters

- **Key Changes Proposed by Brent:**
 - Discussion on planning matters in political groups is of course allowed – but Planning Committee Members must approach decision making duties with an open mind and must not be influenced by party politics
- **Review Comments:**
 - Changes are supported

8.2 Cabinet Member Guidance on Discussing Planning Matters

- **Key Changes Proposed by Brent:**
 - Cabinet Members may engage in a wide range of meetings. In doing this they must respect the general and planning codes of conduct and not seek to improperly influence planning decisions
- **Review Comments:**
 - Changes are supported

8.3 Member Guidance on Pre – Application Discussions

- Key Changes Proposed by Brent:
 - Member attendance at pre – app meetings must be accompanied by an officer and a meeting not taken
- Review Comments:
 - Changes are supported

9. Planning Committee Site Visits

9.1 Main Purpose of Member Site Visits

- Key Changes Proposed by Brent:
 - Clarity of the design and impact of the proposed development, when submitted material is unclear.
- Review Comments:
 - Changes are supported

9.2 Who Decides if the Planning Committee should go on a Site Visit?

- Key Changes Proposed by Brent:
 - Head of Planning and the Committee Chair.
- Review Comments:
 - Changes are supported

9.3 Member Guidance when on a Committee Site Visit

- Key Changes Proposed by Brent:
 - More detailed guidance to avoid bias and the appearance of bias.
- Review Comments:
 - Changes are supported

10. Membership and Jurisdiction of the Planning Committee

- Key Changes Proposed by Brent:
 - None
- Review Comments:

- None

11. Meetings of the Planning Committee

11.1 Planning Committee Guidance on Assessing Information for Decisions

- Key Changes Proposed by Brent:
 - Members to have sufficient information to make a decision
- Review Comments:
 - Changes are supported

11.2 Planning Committee should only consider authorised information for Decisions, which have been assessed by Officers and the Chair

- Key Changes Proposed by Brent:
 - Information presented at Committee must have been assessed by Officers first
- Review Comments:
 - Changes are supported

11.3 Decisions Contrary to the Officers' Recommendation

- Key Changes Proposed by Brent:
 - Before a “contrary” decision is made Officer and Legal advice must be listened to.
 - Members who disagree with the officer recommendation must also explain their planning reasons for disagreeing.
- Review Comments:
 - Changes are supported

11.4 Discussion and Questions and Answers at Committee should always be carried out with respect for all participants

- Key Changes Proposed by Brent:
 - No abuse – only Respect
- Review Comments:
 - Changes are supported

11.6 Discussion and Questions and Answers at Committee should only refer to material planning matters

- Key Changes Proposed by Brent:
 - Planning matters relevant to the planning application only.
- Review Comments:
 - Changes are supported

11.7 Planning Committee Voting Guidance

- Key Changes Proposed by Brent:
 - Committee members must be present for the whole debate to be able to vote on an item
- Review Comments:
 - Changes are supported

12. Member and Officer Relations

- Key Changes Proposed by Brent:
 - None
- Review Comments:
 - None

13. Training for Planning Committee

13.1 Member Planning Committee Training is Mandatory

- Key Changes Proposed by Brent:
 - Training is critical and will be updated from time to time
- Review Comments:
 - Changes are supported

14. Review of the Code of Practice

14.1 Timetable and Purpose

- Key Changes Proposed by Brent:
 - Clarity on timetable and purpose
- Review Comments:
 - Changes are supported

APPENDIX 2

PLANNING CODE OF PRACTICE

1. Purpose of this Code

- 1.1. 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 Localism Act 2011. Members must follow the requirements of the Brent Members' Code and apply this Code in light of the Members' Code. The standards of behaviour expected of officers is set out in a separate Code of Conduct and Conflict of Interest policy which all officers are required to follow. In addition, employees have to follow all other relevant HR policies of the Council as well as the terms and conditions of their contract of employment. The purpose of this Code is to provide more detailed guidance on the standards to be applied by members specifically in relation to planning matters.
- 1.2. The Code seeks to ensure that officers and members consider and decide planning matters in a fair impartial and transparent manner. 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.
- 1.3. If a member does not abide by this Code the member may put the Council at risk of proceedings on the legality or maladministration of the related decision; and the member may be at risk of either being named in a report to the Audit and Standards Committee or Council; or if the failure to abide by the Code is also likely to be a breach of the Members' Code of Conduct, of a complaint being made to the Monitoring Officer.
- 1.4. If you have any doubts about the interpretation of this code, you should consult appropriate officers on the point.

2. The Principles of Planning and Decision Making

- 2.1. Members of the Planning Committee shall determine applications in accordance with the relevant planning national, strategic, local and neighbourhood policy framework, unless material considerations indicate. The Brent Members' Code of Conduct and the law relating to Brent Council members' disclosable pecuniary interests and personal interests must be complied with throughout the decision making process. Decisions should not be influenced by the interests of Councillors or because of pressure exerted by applicants, agents or third parties. Members of the Planning Committee must take decisions in the public interest and take account only of material planning considerations. They should not allow themselves to be influenced by members of the public and applicants, agents or third parties who might approach them and they should not be directed by party politics.

- 2.2. The council's planning process is a formal administrative process and members of the Planning Committee have a duty to follow the rules of natural justice and in accordance with the council's duty to act in a way that is compatible with Convention rights under the Human Rights Act 1998.
- 2.3. The rules of natural justice include: the duty to act fairly; the duty to give all those who will be affected by a decision the opportunity of a hearing before a decision is made; and the principle that no person should be a judge in his or her own cause. That principle means that members must be and be seen to be impartial and without bias, and that members should not take part in any decision that affects their own interests.
- 2.4. The Human Rights that are particularly relevant to Planning decisions are Article 6, the right to a fair hearing; Article 1 of the First Protocol, the right to peaceful enjoyment of a person's property and possessions; and Article 8, the right to respect for a person's private and family life, home and possessions.

3. Bias and Predetermination

- 3.1. Members should not take a decision on a matter when they are actually biased (i.e. have a direct or financial interest in the application) in favour or against the application, or when it might appear to a fair minded and informed observer that there was real possibility of bias, or where a member has predetermined the matter by closing their mind to the merits of the planning matter before they come to take a decision on it.
- 3.2. The courts have sought to distinguish between situations which involve predetermination or bias on the one hand and predisposition on the other. The former is indicative of a "closed mind" and likely to leave the committee's decision susceptible to challenge by Judicial Review or complaint to the Ombudsman. The latter reflects the legal position that a councillor is entitled to have an opinion on a planning matter before it comes to committee provided that he/she remains open to listening to all the arguments presented at the meeting and the possibility of changing his/her mind as a result.
- 3.3. Section 25 of the Localism Act 2011 provides that a councillor should not be regarded as having a closed mind simply because they previously did or said something that, directly or indirectly, indicated what view they might take in relation to any particular matter.
- 3.4. Although the Localism Act recognises the reality of the role of members in matters of local interest and debate, it does not amount to the abolition of the concept of predetermination. A member taking part in a decision on a planning matter must be open to any new arguments about the matter up until the moment of a decision. A member should not comment or make any commitment in advance as to how they intend to vote which might indicate that they have closed their mind. Any planning decision made by a member who can be shown to have approached the decision with a closed mind will still expose the council to the risk of legal challenge.

4. Accountability and Interests

- 4.1. 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. Those interests might include acting as an agent or consultant with respect to planning applications in the borough.

- 4.2. If a member who is not a member of the Committee makes representations to the Committee, either in person or in writing, the member shall state the reason for wishing to do so. Such a member shall disclose whether or not he/she has been in contact with the applicant, agent, objector(s) or any other interested party concerning the planning matter.
- 4.3. If a member of the Council has a **personal interest** in any planning application or other matter before the Planning Committee, then the member shall, if present, disclose the existence and nature of the interest before the matter is discussed or as soon as it becomes apparent. If, in accordance with paragraph 24 of the Members' Code of Conduct, the interest is a 'sensitive interest', the member must disclose to the meeting that he/she has an interest that is sensitive but need not disclose the nature of the interest or any other sensitive information. The member may then, subject to paragraph 4.4, speak and, if applicable, vote on that particular item.
- 4.4. However, if the personal interest is such that a member of the public knowing the facts would reasonably regard it as so significant that it is likely to prejudice the member's judgement of the public interest, then the member must not take part in the discussion or vote on the matter, save that if a member of the public has the right to attend the meeting, make representations, answer questions, or give evidence, then the member will have the same right. Once the member has exercised that right then the member must withdraw from the room for the rest of that item and play no further part in the discussion or vote.
- 4.5. If a member of the Council is aware he/she has a **disclosable pecuniary interest** in any planning application or other matter before the Planning Committee, then the member shall, if present, disclose the existence and nature of the interest before the matter is discussed or as soon as it becomes apparent. If, in accordance with paragraph 24 of the Members' Code of Conduct, the interest is a 'sensitive interest', the member must disclose to the meeting that he/she has an interest that is sensitive but need not disclose the nature of the interest or any other sensitive information. If a member has a disclosable pecuniary interest in a planning matter the member must withdraw from the room where the meeting is being held and not take part in the discussion or vote on the matter. If a member has a disclosable pecuniary interest these prohibitions apply to any form of participation, including speaking as a member of the public. In other words, it does not matter in what capacity the member attends the meeting.
- 4.6. If a member has a disclosable pecuniary interest in any planning application or other matter before the Planning Committee, and the interest is not entered in the council's register, and is not the subject of a pending notification, he/she must notify the Monitoring Officer of the interest before the end of 28 days beginning with the date of the meeting.
- 4.7. A failure to comply, without reasonable excuse, with the rules relating to disclosable pecuniary interests can be an offence.
- 4.8. If a member of the Council has a disclosable pecuniary interest or a personal interest (which is so significant that it is likely to prejudice the member's judgement of the public

interest) in a planning application or other matter before the Committee, 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.

- 4.9. 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 personal interest which is so significant that it is likely to prejudice the member's judgement of the public interest.
 - 4.10. The Monitoring Officer shall maintain a register of contacts 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 26 and other members of the Council may record such approaches if they so wish.
 - 4.11. 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 Strategic Director Regeneration and Environment and take no part in the decision making process. The declaration of such interest shall also be recorded in the minutes of the meeting. This public register will be available for inspection at Planning Committee meetings.
 - 4.12. 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.
 - 4.13. In relation to all matters not addressed above, all such officers shall comply with the Royal Town Planning Institute Practice Advice on Ethics and Professional Standards, or any guidance replacing this.
5. A detailed protocol for **call-in**, which enables a decision to be reviewed before it is implemented, is set out in the "Protocol on Call-in" (Part 5 of the Constitution); and the Planning Committee terms of reference (Part 3 of the Constitution).
6. Development proposals submitted by Councillors, Officers and the Council
- 6.1. If a Councillor submits an application for planning permission they must inform the Council's Monitoring Officer of such a planning application. If the application can be dealt with under officer delegated powers, the decision must be approved by either the Head of Planning or the Strategic Director Regeneration and Environment. Councillors must not use or attempt to use their position as a Member improperly to confer on or secure for themselves or any other person, an advantage or disadvantage. When Councillors seek to exercise rights that others would have in their situation, they must do so in the same way that a member of public would i.e. at arm's length and using the same official processes. This also applies to Councillors assisting an interested party.
 - 6.2. If an Officer submits an application for planning permission, and the application can be dealt with by delegated powers, the decision must be approved by either the Head of Planning or the Strategic Director Regeneration and Environment. Officers must not

use or attempt to use their position as a Council Officer to improperly confer on or secure for themselves or any other person, an advantage or disadvantage. When Officer's seek to exercise rights that others would have in their situation, they must do so in the same way that a member of public would i.e. at arm's length and using the same official processes

Development proposals where the Council is the applicant or landowner

6.3. Where the council itself is the landowner or planning applicant then a Planning member should consider whether he or she has had such a significant personal involvement in advocating for, preparing or submitting the planning proposal that the member would be likely to be perceived as no longer able to act impartially or to determine the proposal purely on its planning merits. A member would not be required to withdraw simply because they were, for example, a member of both the Cabinet, or a proposing committee, as well as the planning committee. However a member with a relevant portfolio or individual responsibility for implementing a particular policy should carefully consider whether that role makes it inappropriate for them to participate in a particular planning decision.

7. Approaches to members of the Planning Committee (Lobbying)

7.1. Lobbying is normal in both politics and in planning decisions. A member of the Planning Committee who has been lobbied and wishes to support or oppose a proposal or a Ward Councillor who wishes to campaign for or against a proposal, will not be able to decide the application.

7.2. If an approach is made to a member of the Planning Committee from an applicant or agent or objector or other interested party in relation to a particular 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 Monitoring Officer under paragraph 18.

7.3. For the avoidance of any doubt, if the applicant, agent or objector or other interested party attend and/or speak at a Council organised briefing for members of the Planning Committee then that briefing does not constitute an approach which has to be registered with the Monitoring Officer or disclosed under (ii).

- 7.4. Where a planning application is to be determined under delegated powers Councillors should not put improper pressure on officers for a particular recommendation or do anything which compromises, or is likely to compromise the officer's impartiality.
8. Discussions between members and meetings with developers or their representatives
- 8.1. Provided Members comply with the practical requirements of this code and the requirements of the Members' Code of Conduct, there is no legal rule against Members, whether of the same group or not, discussing strategic planning issues, general policy issues or even future decisions.
- 8.2. Similarly, joint working, both formal and informal, and dialogue between Members of the Planning Committee and Members of the Cabinet is recognised as a legitimate reality of local government life. Members of the Planning Committee need to ensure that when making planning decisions, they make up their own mind and on the planning merits.
- 8.3. Relevant Members of the Cabinet are entitled to meet with developers or their representatives and other relevant stakeholders as part of their role to promote Brent and the regeneration, development and other commercial opportunities available in the borough. In doing so, Members of the Cabinet must always act in the best interests of the council and ultimately in the public interest, and in accordance with the high standards of conduct expected of Members, to ensure that the integrity of the planning process is not undermined and the council is not brought into disrepute.
- 8.4. Reasonable care and judgement should be exercised in relation to such meetings, taking into account the purpose of the meeting, the nature of the issues to be discussed and the timing. In appropriate circumstances, exercising proper judgement may include ensuring a record is kept of the meeting. Cabinet Members should make sure it is understood that their participation in marketing events or commercial discussions is separate from the administrative and regulatory roles of Members of the Planning Committee.
- 8.5. Although Members of the Cabinet are entitled to express support or opposition to development proposed in the borough, they cannot use their position as a Member improperly to confer on or secure for any person, an advantage or disadvantage.
- 8.6. As pre-application discussions or discussions about undecided applications require particular care, the following additional rules apply. An officer must make the arrangements for such meetings, attend and write notes. The meeting arrangements must include agreeing an agenda in advance.
9. Planning Committee Site Visits
- 9.1. The purpose of a site visit is to enable Planning Committee Councillors to view the site and to better understand the impact of the development. Councillors can however ask the Planning Officer present questions or raise points of clarification.
- 9.2. The Chair of the Committee and the Head of Planning shall agree which sites should be visited in advance of the Committee meeting. A site visit should not be necessary for all proposals, only where a proposal appears to be particularly contentious, is of major importance to the area, or the particular circumstances of the site mean that photos, images and plans do not sufficiently portray the site's context.

- 9.3. 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 such as where a member of the Planning Committee is unable to attend the official site visit that has been arranged, a site visit by an individual member may be carried out. The Councillor should avoid making themselves known to the applicant or to neighbours. Accordingly, he/she should not go onto private land, such as the application site or a neighbouring property. The reason for this is that contact between a Planning Committee Councillor and the applicant or a local resident could be misinterpreted as lobbying and may create a suspicion of bias. If such contact is made this should be declared in Committee, but this should not prevent that Councillor from taking part in the consideration of that application.
- 9.4. Whilst on site visits, members of Planning Committee shall keep together as a group and shall not engage individually in discussion with applicants or any members of the public who happen to be there. Members attending the site visit should avoid expressing opinions about the application either to another Planning member, or to any person present.
- 9.5. Failure to attend a formal site visit shall not bar a Planning Committee Councillor from voting on an item at the Committee meeting that considers it, provided the Planning Committee Councillor is satisfied that he/she is sufficiently familiar with the site.

10. Membership and Jurisdiction of the Planning Committee

- 10.1. When the membership of the 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.
- 10.2. 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.
- 10.3. All members of Planning Committee, and in particular the Chair, shall be informed from time to time about the relevant provisions concerning access to information contained in the Local Government Act 1972 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 Director of Legal and HR Services or his or her representative shall be obtained forthwith.

11. Meetings of the Planning Committee

- 11.1. As decision makers members of the Planning Committee must not only ask themselves the right questions but must take reasonable steps to acquaint themselves with the relevant information to enable themselves to answer them correctly. If, for example, material amendments are made to an application, and members feel they have not had sufficient time to understand the new information or that the information before them is insufficient, consideration should be given to deferring the decision or, if necessary, refusing the application.

- 11.2. At meetings, members of the Planning Committee may be given the opportunity to consider material (e.g. written statements, photos, drawings etc.) circulated by one of the interested parties or the public. As this material may not be relevant or accurate or may otherwise call into question whether an application or matter has been dealt with fairly and properly, members should only consider material which officers have provided or which the Chair or the Committee has authorised.
- 11.3. Members are entitled to make a decision which is different from the officer recommendation for good reasons. Sometimes this will relate to conditions or terms of a s106 obligation. Sometimes it will change the outcome, from an approval to a refusal or vice versa. If a member is proposing or supporting a decision contrary to the officer recommendation he/she must understand, articulate and explain the planning reasons why. These reasons must address the issues on which the member disagrees with the officer recommendation and be given prior to the vote and recorded in detail by officers. Also prior to the vote, officers must be given an opportunity to explain the implications of the contrary decision, including an assessment of a likely appeal outcome, and chances of a successful award of costs against the council. Where there is uncertainty or concern about the validity of reasons, members must consider deferring to another meeting to have the reasons tested and assessed by officers in a follow-up report. All of these requirements are the individual responsibility of each member departing from an officer recommendation.
- 11.4. 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 and shall not bully any person.
- 11.5. Members of the Planning Committee should not speak to members of the public (including applicants, agents and journalists) 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.
- 11.6. 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, and the question should not be party political.
- 11.7. 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 as required by Standing Orders.
- 11.8. 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.

12. Member and Officer Relations

- 12.1. 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 Strategic Director Regeneration

and Environment and not to the officer concerned. No such criticism shall be raised in public.

12.2. 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 Strategic Director Regeneration and Environment.

12.3. Members of Planning Committee shall not attempt in any way to influence the terms of the officers' report or recommendation upon any planning matter.

13. Training for Planning Committee

13.1. Members of the Planning Committee (and substitute members) must participate in a programme of training on the planning system and related matters as decided by the council from time to time. The programme will consist of compulsory and discretionary elements. If a Member of the Planning committee fails to participate in compulsory elements of the training this may result in that member being asked to stand down as a member of Planning Committee.

13.2. Members should be aware that training is particularly important for members who are new to the Planning Committee and for members who have not attended training in the recent past.

13.3. Where a member has a genuine difficulty in attending any particular training session officers will try when practicable to accommodate a request for an individual or repeat session.

14. Review of Code of Practice

14.1. The Director of Legal and HR Services will commission a report independent of the planning service in early 2018, and once every four years thereafter on the operation of this Code of Practice. The report should address the extent of compliance with this Code by officers and members, contain an analysis of decisions being made against officers' recommendations and set out any appropriate recommendations for improvement.

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