



Standards Committee
20 January 2010

**Report from the
Borough Solicitor**

For Action

Wards Affected:
ALL

Planning Code of Practice Review

1.0 Summary

- 1.1 This is the annual report from the Borough Solicitor following the Planning Code of Practice Independent Annual Review for the period June 2008 – May 2009.

2.0 Recommendations

That members

- 2.1 Note the findings of the Planning Code of Practice Independent Annual Review and the Borough Solicitor's comments.
- 2.2 Note the changes to the Planning Code proposed by the Borough Solicitor which will be made under her delegated powers set out in the Constitution at Article 1 para 1.10(b)

3.0 Detail

- 3.1 Paragraph 2 of the Planning Code of Practice requires the Borough Solicitor to commission an independent report on the operation of the Planning Code every year and that the report should be presented to this Committee.
- 3.2 The annual review for 2008–9 was carried out by the Council's management services team and a copy of the review is attached to this report as **Appendix 1**.
- 3.3 The review makes a number of recommendations which are set out below. Also set out are the comments of the Borough Solicitor on the recommendations arising from the review.

- 3.4 "The Code should be amended to ensure that two Councillors must request a site visit relating to a particular application in order to ensure consistency".

Borough Solicitor Comments This recommendation has been incorporated into the proposed amendments to the Planning Code of Practice at paragraph 19.

- 3.5 "Committee members should be reminded of the required conduct on site visits and officers should ensure compliance in this area".

Borough Solicitor Comments. It is noted that one of the 15 members consulted felt that the Code was not followed in relation to site visits and the report states detailed discussion took place at a site meeting. It is also commented that the members group should remain together. In view of the potential for problems arising in managing site visits, further training will be provided.

- 3.6 "In the Register of Approaches, the nature of the approach should be recorded in addition to the details currently required".

Borough Solicitor Comments. The register records the name of the councillor who received the approach, the person who made it, the planning issue to which it relates and the date of the approach. The nature of the approach is often self evident from the details of the person, or organisation, that makes the approach. However, brief detail will be included. Members other than those on the planning committee will also be reminded of the need to register approaches.

- 3.7 "Officers should ensure members comply with the correct procedures when making declarations of approaches, personal interests and prejudicial interests. Officers could consider creating a summary card of the main points on these matters, which would simplify terms and procedures for members and help to ensure full compliance with the Code".

Borough Solicitor Comments. The report comments that the Code in relation to approaches is complied with by members, which suggests that the Code is understood by members. Likewise, it is recorded that members comply with the requirements in relation to prejudicial interests. The incidents of non compliance appear to relate to not recording the nature of the personal interest in some cases, and some confusion between an approach and a personal interest.

Members are sent an annual conduct letter in August each year by the Monitoring Officer. This includes considerable detail in relation to personal and prejudicial interests. There is a separate paragraph in the annual conduct letter on the planning and licensing codes. The subject of planning approaches and how members should respond is specifically addressed. Furthermore, in August 2008 a Monitoring Officer's Advice Note was issued in relation to the Planning Code of Practice. This details again the process to be adopted when members are approached on planning matters, and reminds

members of their duties in relation to personal and prejudicial interests. There were six Monitoring Officer Notes in 2007 on members' conduct – largely prompted by the introduction of the new Code of Conduct. All of these commented in varying degrees on declaration of interests. In 2006 there were three Monitoring Officer Advice Notes on various aspects of members conduct on planning issues. A Monitoring Officer Advice Note will be issued re iterating previous advice and highlighting any changes to the Planning Code (see below).

- 3.8 "All Councillors should be provided with information on an annual basis on matters relating to the Planning Committee, such as how to register an approach and when they are required to declare a personal/prejudicial interest".

Borough Solicitor Comments. As set out above in 3.7 above the Monitoring Officer has sent out detailed advice on various aspects of members' conduct relevant to planning matters including Annual Conduct letters. These Notes will continue to be sent. Furthermore, training was arranged by Environment and Culture in July 2009 on the subject of 'How to make a good planning decision' which was attended by 14 members. Environment and Culture also report legislative changes to the planning committee and arrange presentations on new developments in planning matters.

- 3.9 Officers should review current training for members. It appears that a significant proportion of members would like or would benefit from further training.

Borough Solicitor Comments. Members are provided with regular Monitoring Officer Advice Notes (see 3.7 above). There is a Members Development programme managed by the Mayor's Office which identifies individual training needs for members and this will include training on planning issues where a need is identified. There will also be a comprehensive training programme for members following the local elections. Further training will also be arranged over the next year by Environment and Culture for members who are on the planning committee.

- 3.10 "The reasons stated for overturning officers' recommendation that are recorded in the minutes continue to be an area of concern. Due care and attention must be paid to developing adequate planning reasons. Officers should consider further training in this area for members".

Borough Solicitor Comments This comment relates to the recording of reasons for granting planning permission contrary to officers recommendations. Members will be reminded in the course of training to be provided as outlined above, and by the Democratic Services officer at the planning committee.

- 3.11 "Further care must be taken to ensure that all Councillors in a particular Ward are not selected to be members or alternates of the Planning Committee".

Borough Solicitor Comments. The Party Groups select members for the committees. The leaders and the party offices will be advised of the need to ensure that all ward councillors are not members of the Planning Committee. Another reminder will be sent after the elections and before the annual meeting when committee membership is decided.

- 3.12 "Paragraph 25 should be amended so that there is no longer a requirement to record the number of instances. It is recommended that the last phrase be replaced with a clause that ensures that (i) the minutes record that changes have taken place and (ii) the reasons why changes have occurred are recorded in the supplementary information".

Borough Solicitor Comments. The amendment suggested by the review forms part of the proposed changes to the Code.

- 3.13 "Members of the public should be encouraged to fill in the questionnaires provided by Democratic Services by the Chair at the beginning of Committee meetings".

Borough Solicitor Comments Forms for completion by the public are provided at planning committee and sometimes specifically handed to members of the public. Democratic Services Officers will remind the Chair to encourage the public to complete the forms.

- 3.14 Officers should consider members' wishes that all votes (including those that go in accordance with officers' recommendation) be recorded either in the minutes or in a separate record and a clear policy should be defined on this matter.

Borough Solicitor Comments The Code already provides for the recording of views contrary to officer recommendation. The Constitution provides that members who wish their vote to be recorded at any committee can do so, and there is provision in the Constitution for a majority of members of a committee to require that all votes on that motion be recorded.

- 3.15 "Officers charged with recording the minutes of Committee meetings should be reminded of the provisions of Paragraph 26 of the Code".

Borough Solicitor Comments This relates to the recording of reasons when members vote against the recommendation of an officer: Democratic Services officers will be reminded of the need to record reasons.

- 3.16 "Members of the Planning Committee should be reminded through training and briefings that party political considerations should play no part in their deliberations on planning matters".

Borough Solicitor Comments This will be highlighted in the forthcoming Monitoring Officer Advice Note and members will be reminded during training sessions

- 3.17 "Following the Standards Committee's consideration of this report, officers from should work together to create an action plan that will ensure the timely and complete implementation of the above recommendations".

Borough Solicitor Comments The action proposed to be taken to implement the recommendations is set out above. A checklist will be used to ensure that that the action has been taken.

- 3.18 The review also comments on the implementation of the recommendations made for the previous period 2007 -2008. The Borough Solicitor's views are incorporated in the comments above.

- 3.19 The Local Government Association last year updated its guidance note on 'Probity in Planning' which was first published in 1997. It is considered that as part of the annual review the opportunity should be taken to update the Council's Planning Code of Practice to reflect the changes promoted by the Local Government Association in its guidance note. The Planning Code with proposed amendments is attached as Appendix2.

- 3.20 The proposed changes to the Code include the following matters:

- i) The Planning Code needs to be clearer about the position of Councillors who submit applications for themselves and this is addressed by the proposed amendment set out in paragraph 16.
- ii) On approaches to members of the Planning Committee it should be made clear that it includes objectors. At the present time, the Code just refers to "other interested parties". This has been addressed by the proposed amendment set out in paragraph 17.

- 3.21 There are also changes to the Code relating to officers, and other minor changes which seek to clarify or expand upon matters already in the Code.

- 3.22 The proposed amendments to the Planning Code are minor in that they do not fundamentally alter the provisions of the Code but merely seek to expand on or clarify the existing provisions. Accordingly the Borough Solicitor has power under Article 1 of the Constitution to make such changes. Members are therefore asked to note the proposed changes.

FINANCIAL IMPLICATIONS

- 4.1 There are no direct financial implications arising from this report.

4. STAFFING IMPLICATIONS

- 5.1 There are no direct staffing implications arising from this report.

5. DIVERSITY IMPLICATIONS

- 6.1 Officers believe that there are no specific diversity implications in this report.

6. LEGAL IMPLICATIONS

- 6.1 The Planning Code was first adopted by the Council on 22 May 2002 and it has been subsequently amended by the Council from time to time on the recommendations of the Borough Solicitor and this committee.
- 6.2 The terms of reference of this committee include assisting members and co-opted members to observe the Code of Conduct and the Planning Code of Practice, to monitor the operation, effectiveness and compliance with the Planning Code and to advise the Council on the revision of the Planning Code.

Background Information Brent Planning Code of Practice

Should any person require any further information about the issues addressed in this report, please contact Kathy Robinson 0208 937 1368.

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