



Audit and Standards Advisory Committee

11 December 2018

Report from the Director of Legal and HR Services

Planning Code of Practice Review Update

Wards Affected:	All
Key or Non-Key Decision:	Not applicable
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	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): (Name, Title, Contact Details)	<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