

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 Officers 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.