



Haringey Council

Agenda item:

**Planning Committee**

On

**4<sup>th</sup> December 2007**

Report Title: **Revision of the Codes and Protocol for Planning Committee**

Joint Report of: **The Assistant Director, Planning & Development Management and the Monitoring Officer**

Wards(s) affected: **All**

Report for: **Non-Key Decision**

**1. Purpose**

1.1 To consider and adopt revised versions of the Members' Code of Conduct for Planning Committee, the Code of Conduct for Member Site Visits and the Protocol for Hearing Representations at Planning Committee.

**2. Recommendations**

2.1 That Members approve and adopt:

- (i) The Members' Code of Conduct for Planning Committee, set out at Appendix 1
- (ii) The Code of Conduct for Member Site Visits, set out at Appendix 2, and
- (iii) The Protocol for Hearing Representations at Planning Committee, set out at Appendix 3 to this report.

Report Authorised by:

**Niall Bolger, Director of Urban Environment**

**John Suddaby, Monitoring Officer**

Contact Officer: **Terence Mitchison, Senior Project Lawyer Corporate**

[terence.mitchison@haringey.gov](mailto:terence.mitchison@haringey.gov) telephone 0208-489-5936

**3. Director of Finance Comments**

3.1 There are no specific financial implications

#### **4. Head of Legal Services Comments**

4.1 The adoption of the revised Codes and Protocol would assist in protecting the Council as Planning Authority from legal challenge and would be consistent with the new national Members Code of Conduct.

#### **5. Local Government (Access to Information) Act 1985**

The background papers set out below can be inspected by contacting Maria Bilbao on 8489-5950:

The former Parts C4 to C6 in the Council's Constitution and the Haringey Members Code of Conduct adopted in May 2007

#### **6. Background**

6.1 There are three "Planning Procedures" that apply specifically to the work of the Planning Committee: (i) the Members' Code of Conduct for Planning Committee, (ii) the Code of Conduct for Member Site Visits, and (iii) the Protocol for Hearing Representations at Planning Committee.

6.2 Before the revisions to the Constitution adopted by Annual Council on 21 May 2007, these "Planning Procedures" were formally within the Council's Constitution as Parts C4, C5 and C6. Since Annual Council these "Planning Procedures" have ceased to be part of the Constitution but they still remain in force to regulate the proceedings of the Planning Committee and Members conduct in relation to Planning functions. The consequence of removing them from the Constitution is that they are under the control of the Planning Committee without requiring any confirmation of changes from full Council.

6.3 The three "Planning Procedures" have not been amended significantly since May 2002 when they were adopted as Parts of the first Council Constitution that ushered in "executive arrangements". There have been many changes over the last 5 years that need to be taken into account. Probably the most important is the new national Members' Code of Conduct that applies to all the work of local Councillors not just in the Town Planning sphere. The new rules that govern the actions of Members declaring a prejudicial interest must be reflected in the Members' Code of Conduct for Planning Committee.

6.4 Members will be aware that the proceedings of the Planning Committee are also subject to the Committee Procedure Rules (Part 4 Section B of the Constitution) and the Miscellaneous Standing Orders (Part 4 Section C). These Rules are in the Constitution because they affect the work of all Committees and Sub-Committees across the Council.

6.5 The Committee Procedure Rules contain provisions relating to matters such as the appointment of a "substitute Member" when a regular Member cannot attend a Committee and the removal of persons causing a disturbance. The Miscellaneous Standing Orders deal with matters such as the Statement of Members' Attendances and criticism of officers

at meetings. These two sections of the Constitution were reviewed by the Constitution Review Working Group early this year and a few changes were adopted at the last Annual Council.

## **7. The Members' Code of Conduct for Planning Committee**

- 7.1 The text changes proposed to the Members Code of Conduct for Planning Committee are set out in Appendix 1 to this report. The words proposed for deletion are shown struck through. The words proposed for addition or insertion are shown in italics and underlined. References in this section of the report to paragraph numbers are references to the relevant paragraph in the Code at Appendix 1.
- 7.2 Throughout the Code references to the former Planning Applications Sub-Committee have been replaced by references to the Planning Committee. References to the Assistant Director, Planning and Development are updated to the Assistant Director, Planning and Development Management.
- 7.3 In paragraphs 2.01 to 2.05 the legislation is updated to include the Planning and Compulsory Purchase Act 2004 and the quotations from Government policy take account of new guidance in Planning Policy Statements.
- 7.4 In paragraph 2.02 the statutory plan is now the UDP adopted in 2006, replacing the 1998 plan, and there is a new reference to the Local Development Framework. Paragraph 2.01 and the new paragraph 2.08 mention the role of the London Plan and the Mayor of London's Planning powers.
- 7.5 Changes to paragraph 3.01 make clear that the Code applies to all applications for permission or approval under Planning legislation even when the Committee is being consulted informally. There is no need to specify matters such as listed building consent individually.
- 7.6 At paragraph 5.01 there is a significant change to reflect best practice with regard to Member training. Members are now required to have undertaken appropriate Planning training before participating in decisions at all. The reference to a 3 month period allowed for training while a Member serves on the Committee has been deleted.
- 7.7 In paragraph 5.02 the reference to the General Purposes Committee is deleted because the GPC no longer has any reserve Planning functions since the review of the Council's Constitution.
- 7.8 Paragraph 5.06 deals with the dangers of reaching conclusions in advance of the Committee meeting and it adds the risks of "bias" and "pre-determination" which could expose a decision to legal challenge.
- 7.9 Paragraph 5.12, on the "personal involvement" of Members with parties to applications, now makes it clear that the interest which must be declared is a "prejudicial interest". The test for this is re-stated in the terms used in the national Members' Code of Conduct.

Added to the end of this paragraph is the requirement that a Member with a prejudicial interest must avoid any attempt to influence the decision “improperly” (i.e. in ways not open to ordinary members of the public).

- 7.10 A Member declaring a prejudicial interest will, as previously, be debarred from participating in the Committee’s decision (paragraph 5.12). However, the national Members’ Code of Conduct contains new mandatory rights for such a Member which have now been incorporated into the Council-wide Haringey Members’ Code of Conduct. A Member declaring a prejudicial interest may attend during that item but only for the purposes of making representations, answering questions or giving evidence and provided that the meeting is open to the public. Otherwise the Member must leave the chamber. This is now in a new paragraph 5.13.
- 7.11 In paragraphs 5.07 and 5.08 references have been added to these rights of Members with a prejudicial interest under paragraph 5.13. So where a Member of the Committee expresses a firm view on an application, or makes representations to the Planning Service, before the relevant Committee, that Member will have a prejudicial interest.
- 7.12 Paragraphs 6.04 and 6.05 apply the rules on Members who do, or may, have prejudicial interests to Members who are not on the Planning Committee. These Members, if they declare a prejudicial interest, also have the right to attend during the item but only for the purposes of making representations, answering questions or giving evidence when the meeting is open to the public.
- 7.13 Paragraph 5.15 on “hospitality” has been amended to make a distinction between improper inducements offered by lobbyists on the one hand and proper proposals for planning obligations reported by officers on the other hand.
- 7.14 In paragraph 5.22, which deals with Council-owned land, the reference to “The Executive” has been replaced by the words “Cabinet or other Council body”. There is no absolutely clear rule but there is a real risk that a perception of “bias” could undermine a decision on a Planning application if it had been taken by a Member who had previously participated in a land management or disposal decision taken by another Council body in relation to the same site.
- 7.15 Paragraph 6.03 clarifies the rights of Members not on the Planning Committee to attend Planning Committee meetings using the procedure now set out in paragraph 46 of the Committee Procedure Rules (Part 4 Section B of the Constitution). This involves giving advance written notice to the Chair of their wish to attend.
- 7.16 In paragraph 7.01 the references to the former National Code of Local Government Conduct and the former Part C of the Constitution have been deleted.
- 7.17 Paragraph 8.08 will include mention of the Council’s Standards Committee since an allegation that a Member has breached the Members’ Code of Conduct can now be investigated locally by the Haringey Standards Committee.

7.18 Paragraph 9.01 deals with criticism of Planning Officers at Committee. This has been amended in line with the Miscellaneous Standing Orders (Part 4 Section C in the Constitution). Members should endeavour to avoid public criticism of officers at the meeting but this does not stop Members asking proper questions. Concerns about individual officers should be raised with the Assistant Director Planning and Environmental Control or with the Director of Urban Environment at first instance rather than with the Chief Executive.

## **8 The Code of Conduct for Member Site Visits**

- 8.1 The text changes proposed to the Code of Conduct for Member Site Visits are set out in Appendix 2 to this report. The references in this section of the report to paragraph numbers are references to the relevant paragraph in the Code at Appendix 2.
- 8.2 The procedure now generally adopted for site visits is an official visit arranged by officers in advance of the report first being considered at Committee. Members should try wherever possible to attend the official visit. A personal site visit by a Member alone is the “fallback” option. For this reason paragraph 1.02 is deleted as no longer appropriate.
- 8.3 Amendments are proposed in paragraphs 1.03 and 1.04 to reflect the intention, consistent with best practice, that most applications will require a site visit with only a minority of the simpler cases being determined without one. The old paragraph 1.05 is deleted as no longer appropriate.
- 8.4 The intended procedure is that the Assistant Director Planning and Environmental Control in consultation with the Chair will decide which cases require site visit taking into account the views of individual Committee Members. This is now provided for in the new paragraph 1.05.
- 8.5 Site visits are to be arranged in advance of the application first being reported to Committee. The idea is to avoid any deferral of applications for site visits which would prejudice the achievement of the tight prescribed time limits for determining applications. The procedure is set out in the new paragraph 1.06 and the old paragraphs 1.06, 3.01 and 3.02 are deleted as inappropriate.
- 8.6 Changes are made to the new paragraphs 3.02 (“Procedure on Site”) and 3.03 to achieve the objective of a fair and transparent process during site visits. In most cases objectors against, and supporters of, the application will not be invited. Members would be guided around the site by officers alone. In a few cases specific objectors and supporters may be invited to site visits where this is necessary to explain the issues to Members (paragraph 3.03).
- 8.7 The changes made to paragraphs 3.04 and 3.05 are for clarification and reflect the idea that the site visit will generally be taking place before the application is first reported to Committee.

- 8.8 The new paragraphs 3.06 and 3.07 encourage Members to attend every official site visit arranged for them. If that proves impossible, then Members should try to visit the site on their own.
- 8.9 No change is proposed to the long-standing rule, now in paragraph 3.08, that a Member's failure to visit the site will not automatically disqualify that Member from participating in the decision at Committee. A new provision is suggested at the end of this paragraph to the effect that the Assistant Director Planning and Environmental Control in consultation with the Chair may advise a Member not to participate in the decision if the Member's failure to visit the site at all beforehand would make a proper understanding of the issues impossible.

## **9 The Protocol for Hearing Representations at Planning Committee**

- 9.1 The text changes proposed to the Protocol for Hearing Representations at Planning are set out in Appendix 3 to this report. The references in this section of the report to paragraph numbers are references to the relevant paragraph number in the Protocol at Appendix 3.
- 9.2 The change to paragraphs 2.01 and 2.03 and the new paragraph 2.02 are intended to put Beyond doubt the different procedures applied to members of the public applicants and others outside the Council who are required to complete a standard form when they wish to address the Committee as compared to the procedure for Members not on the Planning Committee and officers outside the Planning Service who should give advance written notice to the Chair when they wish to speak. The rule for Members is already in paragraph 46 of the Committee Procedure Rules (Part 4 Section B of the Constitution).
- 9.3 In paragraph 2.04 the Deputations Procedure is now in paragraph 29.10 of the Committee Procedure Rules not Standing Order 37. In paragraph 2.05 the Petitions Procedure is now in paragraph 11.1 of the Council Procedure Rules.
- 9.4 In the old Protocol for Hearing Representations at Planning Committee there were different procedures for those applications where officers were recommending refusal as compared to those where officers were recommending the grant of permission. This cannot strictly be reconciled with the rules of Natural Justice because in all cases the applicant should have the same right to have representations heard as the objector's side. Accordingly, the old paragraph 2.06 has been deleted and the heading of paragraph 2.07 has been amended so that it applies to all cases regardless of the officer's recommendation.
- 9.5 In paragraph 2.07(e) an obsolete reference to Standing Order 41 is deleted as this is now in paragraph 46 of the Committee Procedure Rules, as explained above.
- 9.6 The small change in paragraph 2.08(a) and the deletion of sub-paragraphs 2.08(c) and (d) reflect the intention that applications will not, so far as possible, be deferred for site

visits which should take place before the meeting. Exceptionally, applications may have to be deferred for some other reason.

- 9.7 The correction in paragraph 2.08(b) is to clarify that the speaker opposing the applicant will be an “objector”.
- 9.8 The example given in paragraph 2.09 (b) for doubling the time and the speakers allowed for large/controversial applications has been clarified and corrected.
- 9.9 In paragraph 2.10 the old rigid maximum time of one and a half hours allowed for dealing with any application is being amended. Greater flexibility would now be allowed for the very few applications of exceptional significance but the expressed aim is to deal with all other applications within one hour.

## **10 Financial Implications**

- 10.1 There are no specific financial implications.

## **11 Legal Implications**

- 11.1 The adoption of the revised Codes and Protocol would assist in protecting the Council as Planning Authority from legal challenge and would be consistent with the new national Members Code of Conduct.

## **12. Equalities Implications**

- 12.1 There are no specific equalities implications.

## **13. Recommendations**

- 13.1 That Members approve and adopt:
  - (i) The Members' Code of Conduct for Planning Committee, set out at Appendix 1
  - (ii) The Code of Conduct for Member Site Visits, set out at Appendix 2, and
  - (iii) The Protocol for Hearing Representations at Planning Committee, set out at Appendix 3 to this report.

## **14. Use of Appendices / Tables / Photographs**

- 14.1 Appendix 1 – the proposed Members' Code of Conduct for Planning Committee
- 14.2 Appendix 2 – the proposed Code of Conduct for Member Site Visits
- 14.3 Appendix 3 – the proposed Protocol for Hearing Representations at Planning Committee.