

## Report of the Assistant Director Corporate Services (City Solicitor) and the Assistant Director Planning to the meeting of the Standards Committee to be held on 20<sup>th</sup> May 2010.

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### Subject:

**REVIEW OF THE PLANNING CODE OF CONDUCT**

### Summary statement:

This report sets out proposals and options for amendments to the Council's planning Code of Conduct following review. The report also outlines the action taking by the Council in response to the recommendations made by the Standards Board's Ethical Standards officer in response to an investigation into the conduct of a councillor under complaint number SBE-06997-NNQOS.

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### Portfolio:

**Environment and Culture**

### Improvement Committee Area:

**Environment and Waste Management**



2006-2007  
Improving Rural Services  
Empowering Communities



INVESTOR IN PEOPLE

Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



**BRADFORD**  
METROPOLITAN DISTRICT COUNCIL

## 1 SUMMARY

- 1.1 This report sets out proposals for amendments to the Council's Planning Code of Conduct after review of its contents and consultation with the chairs of the Regulatory and Appeals Committee and the three Area Planning Panels. The proposed amendments to the Planning Code are attached in the Appendix to this report with suggested amendments underlined for ease of reference.
- 1.2 The report also sets out action taken by the Assistant Director Planning and the Assistant Director Corporate Services (City Solicitor) in response to the recommendations made by the Standards Board's Ethical Standards officer in response to an investigation into the conduct of a councillor under complaint number SBE-06997-NNQOS.

## 2 BACKGROUND

- 2.1 The need to review the Planning Code of Conduct has been on the Committees work programme for some time.
- 2.2 At its meeting of the 26<sup>th</sup> January 2010 the Committee resolved as follows:

### **Resolved -**

**(1) That the Monitoring Officer provide a future report setting out the system of ensuring that the members' register of interests is completed and updated.**

**(2) That it be noted that the review of the planning protocol is already on the work programme and it be requested that the recommendations of the Ethical Standards Officer be considered as part of that review.**

**(3) That assurance be sought from Group Leaders and the Chief Executive that all members and officers are compliant with formally agreed protocols and that they are aware of the process for raising any concerns.**

### ***ACTION: Assistant Director,***

- 2.3 This report addresses resolution (2).

## 3. DETAILS OF PROPOSED AMENDMENTS TO THE PLANNING CODE

- 3.1 The proposed amendments to paragraph 3 and the new paragraph 4 make a clear distinction between the implications of the member's code of conduct with regard to planning decisions involving an obligation to declare members interests; and common law issues of predetermination and bias. The existing code of conduct as drafted implies that issues of predetermination can be described as bringing into question whether a member needs to declare a personal and prejudicial interest. This is not usually the case. The proposed revisions make a clear distinction; and specify circumstances where a member who can be perceived to have predetermined an application (known as fettering of discretion) should disclose that interest and not participate in the discussion or decision making.

The proposed revisions to Paragraph 3 also outline circumstances where members who have declared prejudicial interests are able to exercise the same limited speaking rights that a member of public may have in, accordance with the protocol applied by the Chair, before leaving the committee room. This amendment brings the current Planning Code of Conduct in line with the revised National Members Code of Conduct.

- 3.2 The proposed amendment highlighted in paragraph 5.1 defines those applications by officers of the Council that should always be referred to the planning panel or the Regulatory and Appeals Committee in the interests of transparency. It is proposed that this requirement be restricted to applications from officers within the Council's top management structure or working within the planning service.
- 3.3 Proposed at 8.5 makes it clear that planning officers should not be pressurised by more senior officers to compromise their professional integrity by being required to alter their recommendations on planning matters. This will not prevent more senior officers disagreeing with the conclusions reached by case officers and substituting their own recommendation but in such cases in the interests of transparency any revised recommendation must be given expressly in the name of such senior officer.
- 3.4 Proposed paragraph 9 discourages planning members from accepting gifts or substantial hospitality from developers, lobbyists or other interested parties.
- 3.5 Paragraph 14 proposes deletion of the reference to circumstances where councillors can require planning applications to be referred to the planning panel/Committee for decision. It is considered this is a procedural matter more properly dealt with in the Council's Scheme of Delegation of Planning Decisions. The current Scheme of Delegation of Planning Decisions approved by the Regulatory and Appeals Committee on the 29<sup>th</sup> April 2009 has relevant provisions.
- 3.6 Paragraphs 17 and 18 follow the recommendations of the Audit Commission in imposing requirements that all planning members receive appropriate training and that an annual review of planning decisions takes place with a view to continuous improvement and maintaining public confidence in the planning system.
- 3.7 It is also proposed that the current planning code should be re-titled in order to make clear that it contains provisions applicable to both to Members and Officers of the Council in their dealings with planning matters.

#### **4. DETAILS OF ACTION TAKEN IN RESPONSE TO STANDARD BOARD RECOMMENDATIONS RE COMPLAINT SBE-06997-NNQOS**

- 4.1 The ethical standards officer made recommendations about the Council's planning service as a result of the investigation.
- 4.2 In response to the recommendations the following actions have been taken, relevant officers and members were notified in writing on 7 August 2009 (during the investigation by the Standards Board) by a senior officer in the planning service

that all future applications submitted by the named Councillor must be referred to the relevant Area Planning Panel.

- 4.3 The Assistant Director Planning ran 2 training sessions specifically for members in December 2009, advising on the planning process in general but the sessions included advice on probity and the planning code of conduct. The sessions are part of an ongoing training programme for officers and members.
- 4.4 The Planning Service now records the outcome of pre-application discussions, through the Major Development Team process for major proposals and through the electronic recording of correspondence on minor proposals. It is also now standard practice for case officers to retain file notes of meetings and discussions with applicants or agents.
- 4.5 As part of an on-going review of the structure of the development management section of the planning service, the Assistant Director Planning will consider how best to achieve flexibility in the structure to allow for the rotation of officers across the area teams.

## 5. **OPTIONS**

- 5.1 Members are asked to consider whether they support the proposed revised Members Planning Code of Conduct.

## 6. **FINANCIAL AND RESOURCE APPRAISAL**

- 6.1 Training initiatives will be facilitated through existing member training budgets.

## 7. **LEGAL APPRAISAL**

- 7.1 This Council's Planning Code of Conduct has been prepared in response to the Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice on Planning Matters in the light of the Local Government ethical framework. Account has also been taken of guidance from the District Audit Service, Local Government Ombudsman and the Standards Board for England.
- 7.2 Adoption of a revised Code is within the powers of the Council to agree its own constitutional arrangements within the legislative framework regulating local government.

## 8. **OTHER IMPLICATIONS**

### 8.1 **Equal Rights**

Central to the Code of Conduct is the need to secure fairness and transparency of regulatory decision making.

**8.2 Sustainability implications**

Proposed review of planning decisions would give opportunities to review the local impact of planning decisions in addressing sustainability issues.

**8.3 Community safety implications**

No direct community safety implications

**8.4 Human Rights Act**

The Council must consider Human Rights implications when making planning decisions. A robust planning code of conduct should assist in ensuring proportionate and fair decision making.

**8.5 Trade Union**

None.

**9. NOT FOR PUBLICATION DOCUMENTS**

9.1 None.

**10. RECOMMENDATIONS**

10.1 That Members note the proposed amendments to the Members Planning Code of Conduct contained in the Appendix to this report and recommend them to the Corporate Governance and Audit Committee for adoption by Council.

10.2 That Members note the action taking by the Assistant Director Planning and the Assistant Director Corporate Services (City Solicitor) in response to the recommendations made by the Standards Board's Ethical Standards officer in response to an investigation into the conduct of a councillor under complaint number SBE-06997-NNQOS

**11. APPENDICE**

11.1 Proposed revised Members Planning Code of Conduct

**12. BACKGROUND DOCUMENTS**

12.1 Local Government Association's Guidance Note on the preparation of Local Codes of Good Practice