

# Executive Summary and Recommendations

**Date:** 2<sup>nd</sup> March 2009

**Subject:** Review of Protocol to avoid potential conflicts of interest

## Summary of this Report

1. At its meeting on 14<sup>th</sup> July 2008 the Committee noted and endorsed a draft protocol produced, in consultation with Councillors Robert Davis and Sir Simon Milton, and the GLA's lawyers, to avoid potential conflicts of interest following Sir Simon Milton's appointment as a special planning adviser to Boris Johnson, the Mayor for London.
2. The protocol was in general terms and was approved on the basis that it be kept under review. This report reviews the protocol and proposes changes to take account of, firstly the fact that Sir Simon is no longer a member of the City Council, secondly the City Council's experience of the Mayor's exercise in practice of his powers under the Town and Country Planning (Mayor of London) Order 2008, which had only recently come into effect when the protocol was initially being considered, and thirdly the Mayor's developing policy in relation to Crossrail

## Recommendations

1. That the Committee note and approve the revised protocol set out in Appendix 2.



City of Westminster

# Standards Committee Report

Item No:	
Date:	2 <sup>nd</sup> March 2009
Classification:	For General Release
Title of Report:	Review of Protocol to avoid potential conflicts of interest
Report of:	Head of Legal Services
Wards involved:	All Wards
Policy context:	The Members Code of Conduct
Financial summary:	There are no financial implications arising from this report
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## 1. BACKGROUND TO THIS REPORT

- 1.1 Following the election of Boris Johnson as the Mayor for London, it was announced that Councillor Sir Simon Milton had been offered, and had accepted, a role as a special planning adviser to the Mayor.
- 1.2 Given Councillor Robert Davis's roles within the City Council as the Deputy Leader and Cabinet Member for the Built Environment, and Chairman of one of the Planning Application Sub-Committees, and the fact that he is Councillor Sir Simon Milton's civil partner, it was apparent that there was the potential for conflicts of interest to arise and it was, therefore, desirable for a protocol to be established to avoid such conflicts of interest. This was readily acknowledged by both Councillors Davis and Milton and the former Director of Legal and Administrative Services therefore drafted such a protocol in consultation with them both, and the Monitoring Officer for the Greater London Authority. The protocol as finally approved by the Committee is attached as Appendix 1.
- 1.3 The initial focus in relation to the drafting of the protocol was to ensure that breaches of the Members Code of Conduct did not occur in relation to performance of either Councillor Robert Davis's or Councillor Sir Simon Milton's functions as councillors within the City Council. It is a matter for the Mayor for London to determine how his advisers discharge their functions when acting in that capacity.
- 1.4 Shortly after the protocol was considered by this committee, Sir Simon resigned as a member of the City Council. Instead of being an adviser to the Mayor on an informal, unpaid basis, as was envisaged when the protocol was drafted, he became Deputy Mayor and a full-time and paid adviser to the Mayor on housing, planning and sustainable development. This has two implications for the protocol. Firstly, as Sir Simon is no longer a Councillor it is no longer necessary for the protocol to deal with his position. Secondly, when the protocol was drafted it provided that, because of his possible conflict of interest, Sir Simon would not advise the Mayor in respect of Westminster applications. Sir Simon no longer has such a conflict of interest and therefore it cannot be assumed that he will never advise the Mayor on Westminster applications.
- 1.5 On the basis that Sir Simon would not be involved in advising the Mayor on Westminster applications, the protocol did not suggest that Councillor Davis should refrain from participating in all applications that are referable to the Mayor. The protocol clarified that Councillor Davis could participate in such applications except where
  - The Mayor has made a direction under Section 2A of the 1990 Act stating that the Mayor is to act as the local planning authority for determining the application.

- The application involves development of a major strategic nature that, in the opinion of the Strategic Director, Built Environment, has London wide implications. Such development is likely to include [major infrastructure development].
- 1.6 The question has recently arisen as to whether there is any reason why Councillor Davis may not participate in the determination of applications which are referable to the Mayor under the Town and Country Planning (Mayor of London) Order 2008 (but which are not “major infrastructure development”) and in relation to which the Mayor has indicated that he may seek from the developer a financial contribution, by making a direction if necessary (but where he has not actually issued such a direction).
- 1.7 It should be emphasised that, on a strict interpretation, the current protocol does not prevent Councillor Davis from participation in such cases. Nevertheless, Councillor Davis has, on legal advice, recently stood down from a Planning Applications Sub-Committee due to consider such applications, pending clarification of the position through this report. As explained below, the scenario is one which is likely to arise frequently in future.

## **2. THE MAYOR’S EXERCISE OF HIS PLANNING POWERS**

- 2.1 The City Council is the local planning authority for Westminster. However the Greater London Authority Acts 1999 and 2007 require the Council to consult the Mayor of London on planning applications that are of “strategic importance” to London. Definitions of strategic applications are determined by the Government and are set out in the Town and Country Planning (Mayor of London) Order 2000 and the Town and Country Planning (Mayor of London) Order 2008 (which came into effect from 6 April 2008).
- 2.2 Those applications referred to the Mayor as required by the 2000 Order the Mayor is able to comment on and, if he considers it appropriate on strategic grounds, direct the Council to refuse planning permission. The Mayor cannot direct approval of these applications.
- 2.3 The Mayor’s new powers under the 2008 Order are now more important in practice. For applications referred to the Mayor thereunder, the Mayor is able to provide comment and a statement whether he considers the application to comply with the London Plan. Where he considers it appropriate on strategic grounds, he can direct the London Borough to refuse planning permission. He can also, where an application meets certain criteria and policy tests, take over the application and become the local planning authority, and determine the application himself.
- 2.4 The approach of the current Mayor to the exercise of his planning powers has been somewhat less “interventionist” than his predecessor. Since 14 July 2008 (when the current protocol was approved) there have been 22 applications referred to the Mayor where he has made comment, and given a statement whether he considers the application to comply with his London Plan. These

applications have not, until recently, given rise to problems or controversy so far as the protocol is concerned.

- 2.5 However in December and January the Mayor considered an application in relation to Howick Place referred to him by the Council under the 2008 Order. The Mayor's initial comment to the City Council was to the effect that the application did not comply with the London Plan, but that it would do so if (amongst other things) a financial contribution were paid by the developer towards Crossrail. The Council indicated to the Mayor (as it was obliged to do under the 2008 Order) that it was nevertheless minded to grant permission. The Mayor then issued a formal direction requiring the Council to refuse permission, and indicating that he would be minded to cancel the direction to refuse, subject to the applicant making a financial contribution towards Crossrail. The applicant did agree to make a financial contribution to Crossrail, and on 4 February the Mayor formally agreed to cancel the direction.
- 2.6 Councillor Davis was not involved in the determination of the Howick Place application. But it is now clear that similar situations are likely to arise quite frequently in future. The background is that in December 2008 the Mayor published initial drafts of (a) Proposed London Plan Alterations and (b) associated Supplementary Planning Guidance on "the Use of planning obligations in the funding of Crossrail". These drafts were only for initial consultation with the London Assembly and the GLA Group. Full public consultation is not due to commence until March 2009. The drafts propose raising funds towards the costs of Crossrail from schemes which (i) are within the London Plan Central Activities Zone boundary and (ii) involve an increase in office space.
- 2.7 Most of the City of Westminster is within the Mayor's Central Activities Zone. No land uses other than offices are affected by the draft policy and the SPG, but most commercial development proposals within Westminster involve office space. The Mayor issued his direction on Howick Place on the basis of these draft policies, and if he follows the same approach in other cases (as it appears he will) there are a large number of applications potentially subject to direction by the Mayor. Attached as Appendix 3 is a chart showing the categories of application referable to the Mayor under the 2008 Order.
- 2.8 The Mayor's draft policies are a material consideration in the determination of planning applications. In the City Council's view, however, no significant weight can be attached to them at this stage, due to the extremely early stage they have reached in the planning process. The Mayor's approach appears to be different from the City Council's. In addition, in cases where the Mayor does issue a direction, the Mayor's interests and the City Council's are likely to diverge – the City Council will wish to continue to apply the policies of its statutory development plan. A developer may not be willing or able to meet the demands of both the City Council and the Mayor.

- 2.9 In all these circumstances it is considered there is a strong case for reviewing and updating the existing protocol. Firstly, the protocol should no longer contain provisions relating to Sir Simon. Secondly, the protocol should recognise the fact that Sir Simon may advise the Mayor on Westminster applications. As set out below, it is recommended that Councillor Davis should declare a personal (but not necessarily a prejudicial) interest in all applications referable to the Mayor on which the Mayor has commented. Thirdly, given the background as set out above, it would be sensible for the protocol to deal expressly with the kind of scenario which may arise where the Mayor does issue a direction and where the City Council's interests and the Mayor's may diverge. In such cases it is recommended that Councillor Davis should regard himself as having a prejudicial interest (and accordingly not participate).

### **3. LEGAL IMPLICATIONS**

- 3.1 The effect of the Code of Conduct for Members is that a member has a personal interest in any Council business where it relates to or is likely to affect the well-being or financial position of the member himself, members of his family, or people with whom he has a close association more than it would affect the majority of the inhabitants of the ward affected by the decision. Sir Simon Milton is a member of Councillor Davis's family for this purpose (and a close associate).
- 3.2 Accordingly, if (hypothetically) representations on a planning application were made by Sir Simon directly, Councillor Davis would clearly have an interest to declare if the matter was before him. In such circumstances, it is likely to be argued that a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice his judgment of the public interest, which is the test under the Code for whether the interest is prejudicial (para 10). Councillor Davis would be well advised, therefore, not to participate in the determination of any such applications (in the same way as he could not participate if the application was made by Sir Simon).
- 3.3 If representations are made by or on behalf of the Mayor, but not by Sir Simon personally, Councillor Davis may still be wise to declare a personal interest because it may be argued that the decision will affect the "well-being or financial position" of Sir Simon (as adviser to the Mayor) to a greater extent than the majority of Council taxpayers etc in the Ward affected by the decision (para 8(1)(b)).
- 3.4 However whether the interest would be prejudicial in such circumstances is necessarily a fact-sensitive question. Would a Member of the public with knowledge of the relevant facts reasonably regard the interest as so significant that it is likely to prejudice Councillor Davis's judgment of the public interest, merely because Sir Simon advises the Mayor on planning matters? In general, given the context and surrounding circumstances as set out in Section 2 above, the answer is likely to be no. However, cases may arise, for example where the Mayor issues a formal direction and the interests of the City Council and the interests of the Mayor are in direct conflict, where the

answer is likely to be yes. Paragraph 2.2 of the proposed revised protocol is new and is intended to reflect this position.

#### **4. OTHER ISSUES**

- 4.1 It could be argued that since Sir Simon Milton is no longer a member of the City Council, the main reason for the protocol has disappeared and that a formal protocol to address the position of a single member, who like all members is subject to the Code of Conduct in any event, is no longer necessary. This report however proceeds on the basis that the protocol can still serve a useful purpose in clarifying the position and avoiding potential problems.
- 4.2 The Leader of the Opposition, Councillor Paul Dimoldenberg, pressed for the introduction of the original protocol. Councillor Dimoldenberg has been advised that a report will be submitted to this Committee on the matter, and has asked whether the protocol should deal with the issue of meetings with developers.
- 4.3 There is no legal or probity reason why a member of a planning applications committee should not meet a developer or an objector before the application is formally considered (indeed there is some recent guidance jointly issued by the Government Office for London, London Councils and London First entitled "Connecting Councillors with Strategic Planning Applications: A Good Practice Guide for London" which suggests that such meetings can in some cases be good practice). When such meetings take place care is needed to ensure that nothing is said which may appear to prejudge the application or objection, and for that reason the Head of Legal Services has given informal guidance to members as to the conduct of such meetings, and the advisability of declaring at committee, in the interests of transparency, where they have taken place. But this issue is not one that arises in the context of the Mayor's role in relation to planning applications, or solely in relation to Councillor Davis, and therefore it does not seem appropriate to deal with it in the proposed protocol.

#### **5. CONCLUSION AND PROPOSED REASONS FOR DECISION**

- 5.1 Given the experience we now have of the operation of the protocol in practice, and of the Mayor's approach to the exercise of his planning powers, and given the change in the position of Sir Simon Milton, it is considered appropriate that the Committee should be appraised of the position and note and endorse the revisions to the protocol which have been drafted to clarify its operation and effect.

<p>If you wish to inspect one of the background papers please contact Peter Large: 020 7641 2711; email: <a href="mailto:plarge@westminster.gov.uk">plarge@westminster.gov.uk</a></p>
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## **Role of Councillor Sir Simon Milton as Special Adviser (Planning) to the London Mayor**

### **Protocol or Guidelines to avoid potential conflicts of interest**

#### **1. Introduction**

- 1.1 Councillor Sir Simon Milton will perform the role of Special Adviser to the Mayor on an informal unpaid basis and not as an employee. In those circumstances Section 1 of the Local Government Act 1989 does not apply and there is nothing to prevent Councillor Milton from remaining a Councillor of Westminster City Council, notwithstanding this role.
- 1.2 Councillor Milton has already signalled his intent to stand down as Leader of the City Council; not to undertake any planning role at the Council; and the GLA have advised that he will not be asked to advise on any planning application required to be considered by the Mayor either within the City Council's boundaries or where the application is within an adjoining London Borough's boundary but which would have a significant impact within Westminster.
- 1.3 Nevertheless, it is acknowledged that potential exists for conflicts of interest and/or misunderstandings to arise, particularly bearing in mind the fact that Councillor Robert Davis is Councillor Milton's civil partner, and Councillor Davis is Cabinet Member for Planning and a Chairman of one of the Planning Application Sub Committees at Westminster.
- 1.4 These guidelines have, therefore, been drawn up in consultation with the GLA and Councillors Milton and Davis to ensure that such conflicts and/or misunderstandings are avoided; that openness and transparency is promoted; and the risk of any breaches of the Members' Code of Conduct is minimised. In addition to being made available to Councillors Milton and Davis, these guidelines will be made available to the GLA, other interested Members of the Council, and Members of staff who are likely to need to be made aware of them.
- 1.5 The guidelines address the position from both Councillors' perspectives separately:

#### **2. The Guidelines**

##### **2.1 Councillor Milton**

Notwithstanding the informal nature of this role, Councillor Milton will register the role in the City Council's Register of Members' interests. In addition the following guidelines should be followed:

- a) Councillor Milton should avoid any planning, transport or highway roles on the City Council, or any other roles which might conflict with his role as Special Adviser (Planning) to the Mayor of London;



- b) He should avoid lobbying or making representations to the Council on behalf of the Mayor on any personal matter ( this is an essential rather than merely a matter of good practice);
- c) If required to make representations to WCC on behalf of the Mayor, to do so on appropriate non Council notepaper, or openly at official meetings as far as practicable; and at all times to take particular care not to give the impression that he is seeking to use his position as a Councillor and/or former Leader of the Council to exert undue or improper influence on Officers or others. (Note: This should not be taken to suggest that , for example, it would in any way be improper for Councillors Milton and Davis to discuss planning matters etc privately, or that Councillor Milton should not have, say, telephone conversations with Directors or other senior members of staff about matters arising from his role).
- d) He should ensure that any confidential information obtained by him as a Councillor is not disclosed to the Mayor/GLA (or anyone else) unless, say, appropriate consent has been obtained; and he should not seek such information for himself for purposes other than his role as a Councillor. (Note: Officers also need to be careful in the distribution of confidential information to avoid causing embarrassment by supplying Councillor Milton with such information where a conflict of interest may arise – and (a) above should assist in this respect).
- e) He should ensure that any confidential information obtained by him as an informal adviser to the GLA which may be subject to a confidentiality agreement is not disclosed to WCC, unless appropriate consent has been obtained ( note Officers at GLA need to be mindful as above).
- f) He will not provide informal planning advice on any application within WCC boundaries, or within any adjoining London Borough's boundaries if the application would have a significant impact in Westminster.

## 2.2 Councillor Davis

- (a) Councillor Davis should regard him self as having a prejudicial interest (and therefore not participate) in any planning applications where
  - The Mayor has made a direction under Section 2A of the 1990 Act stating that the Mayor is to act as the local planning authority for determining the application.
  - The application involves development of a major strategic nature that, in the opinion of the Director of Planning and City Development, has London wide implications. Such development is likely to include the major infrastructure development referred to in Annex A attached.

(Note: Officers should therefore avoid including any such applications on the agenda for the Sub Committee Chaired by Councillor Davis).

- (b) He should declare a personal interest in policy or other executive matters dealt with by him as Cabinet Member for Planning where the Mayor/GLA, or Councillor Milton as Special Adviser, have an involvement. He should also consider whether such interest is prejudicial (and if so not participate in the decision) although in most circumstances such an interest will not be prejudicial under the terms of the Members' Code of Conduct.
  - (c) He should take care not to disclose confidential information obtained by him in his role as a Councillor, to Councillor Milton, where a conflict of interest exists or may arise given Councillor Milton's role as Special Adviser to the Mayor.
3. These guidelines will be kept under review.

**MAJOR INFRASTRUCTURE DEVELOPMENT (Under Part 2 of The Town and Country Planning (Mayor of London) Order 2008)**

**Category 2A**

1. Development which comprises or includes mining operations where the development occupies more than 10 hectares.
2. In paragraph 1, “mining operations” means the winning and working of minerals in, on or under land, whether by surface or underground working.

**Category 2B**

1. Waste development to provide an installation with capacity for a throughput of more than:
  - (a) 5,000 tonnes per annum of hazardous waste; or
  - (b) 50,000 tonnes per annum of waste;produced outside the land in respect of which planning permission is sought.
2. Waste development where the development occupies more than one hectare.

**Category 2C**

1. Development to provide:
  - (a) an aircraft runway;
  - (b) a heliport (including a floating heliport or a helipad on a building);
  - (c) an air passenger terminal at an airport;
  - (d) a railway station or a tram station;
  - (e) a tramway, an underground, surface or elevated railway, or a cable car;
  - (f) a bus or coach station;
  - (g) an installation for a use within Class B8 (storage or distribution) of the Schedule to the Use Classes Order where the development occupies more than 4 hectares;

- (h) a crossing over or under the River Thames; or
  - (i) a passenger pier on the River Thames.
- 2. Development to alter an air passenger terminal to increase its capacity by more than 500,000 passengers per year.
- 3. Development for a use which includes the keeping or storage of buses or coaches where:
  - (a) it is proposed to store 70 or more buses or coaches or buses and coaches; or
  - (b) the part of the development that is to be used for keeping or storing buses or coaches or buses and coaches occupies more than 0.7 hectares.
- 4. For the purpose of paragraph 3(b), the area used for keeping or storing includes the area occupied by maintenance, administrative and staff facilities connected with such use.

## **Category 2D**

- 1. Waste development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated and which falls into one or more of these sub-categories:
  - (a) it occupies more than 0.5 hectares;
  - (b) it is development to provide an installation with a capacity for a throughput of more than:
    - (i) 2,000 tonnes per annum of hazardous waste; or
    - (ii) 20,000 tonnes per annum of waste.

# **Role of Councillor Robert Davis in relation to planning applications referable to the Mayor of London**

## **Protocol or Guidelines to avoid potential conflicts of interest**

### **1. Introduction**

- 1.1 It is acknowledged that potential exists for conflicts of interest and/or misunderstandings to arise from the fact that Councillor Robert Davis is the civil partner of Sir Simon Milton, Deputy Mayor for Policy and Planning and an advisor to the Mayor of London on Planning, Housing and Sustainable Development, and Councillor Robert Davis is Deputy Leader of the Council, Cabinet Member for the Built Environment and a Chairman of one of the Planning Application Sub-Committees at Westminster.
- 1.2 These guidelines have, therefore, been drawn up to ensure that such conflicts and/or misunderstandings are avoided; that openness and transparency is promoted; and the risk of any breaches of the Members' Code of Conduct is minimised. These guidelines will be made available to other interested Members of the Council, and members of staff who are likely to need to be made aware of them.

### **2. The Guidelines**

- 2.1 Councillor Davis should regard himself as having a prejudicial interest (and therefore not participate) in any planning applications where:

The Mayor has made a direction under Section 2a of the 1990 Act stating that the Mayor is to act as the local planning authority for determining the application.

The application involves development of a major strategic nature that, in the opinion of the Strategic Director, Built Environment, has London wide implications. Such development is likely to include the major infrastructure development referred to in Annex A attached.

(Note: Officers should therefore avoid including any such applications on the agenda for the Sub-Committee Chaired by Councillor Davis).

- 2.2 Councillor Davis should declare a personal interest in any planning application which is referable to the Mayor under the Town and Country Planning (Mayor of London) Order 2000 or the Town and Country Planning (Mayor of London) Order 2008. He should also consider whether such interest is prejudicial (and if so not participate in the decision). The fact that an application is referable to the Mayor, and that the Mayor has commended and made a statement to whether the application accords with the London Plan will not normally in itself give rise to a prejudicial interest. Nor will an indication by the Mayor that he may issue a direction with respect to the application in future. However, where the Mayor does issue a direction, Councillor Davis should normally

regard himself as having a prejudicial interest in subsequent decisions about how the Council should react to the direction.

- 2.3 Councillor Davis should declare a personal interest in policy or other executive matters dealt with by him as Cabinet Member for the Built Environment Planning where the Mayor/GLA, or Sir Simon Milton as Deputy Mayor and adviser to the Mayor on Housing, Planning and Sustainable Development, have an involvement. He should also consider whether such interest is prejudicial (and if so not participate in the decision) although in most circumstances such an interest will not be prejudicial under the terms of the Members' Code of Conduct.
- 2.4 Councillor Davis should take care not to disclose confidential information obtained by him in his role as a Councillor to Sir Simon Milton, where a conflict of interest exists or may arise given Sir Simon's role as Deputy Mayor and adviser to the Mayor.
3. These guidelines will be kept under review.